THE SCHEDULE—*contd.*

1	2	3	4	5
Year.	No.	Subject.	Short Title.	Remarks.
1863	XXXI	Giving effect to the publication of certain orders and other matters in the *Gazette of India*.	The Official Gazettes Act, 1863.	
1864	III	Giving the Government certain powers with respect to Foreigners.	The Foreigners Act, 1864.	
"	VI	Authorizing the punishment of whipping in certain cases.	The Whipping Act, 1864.	
"	XV	Amending Act VIII of 1851 (*for enabling Government to levy Tolls on Public Roads and Bridges*).	The Indian Tolls Act, 1864.	
"	XVII	Providing for the constitution of an Office of Official Trustees.	The Official Trustees Act, 1864.	
1865	XXI	Defining and amending the Law relating to Intestate Succession among the Parsis.	The Parsi Intestate Succession Act, 1865.	
1866	V	Amending in certain respects the Commercial Law of British India.	The Policies of Insurance (Marine and Fire) Assignment Act, 1866.	All that is left of the Act provides for the assignment of policies of marine and fire insurance.
"	XXV	Providing for the transfer to the Government of India of certain securities and moneys deposited in the High Courts of Judicature at Fort William, Madras and Bombay.	The Unclaimed Deposits Act, 1866.	
1867	XVI	Authorizing the making of certain acting appointments to certain Judicial Officers.	The Acting Judges Act, 1867.	
"	XXV	Providing for the regulation of Printing-presses and Newspapers for the preservation of copies of books printed in British India, and for the registration of such books.	The Press and Registration of Books Act, 1867.	
1870	I	Providing Rules relating to Quarantine ...	The Indian Quarantine Act, 1870.	
"	V	Enabling the High Courts at the Presidency-towns to deal with costs of petitions for certain moneys transferred to Government.	The Unclaimed Deposits Act, 1870.	*Cf.* Act XXV of 1866.
"	VIII	Providing for the prevention of the murder of Female Infants.	The Female Infanticide Prevention Act, 1870.	
"	XX	Correcting two clerical errors in the Court-fees Act, 1870.	The Court-fees Act (1870) Amendment Act, 1870.	
"	XXVII	Amending the Indian Penal Code ...	The Indian Penal Code Amendment Act, 1870.	
1872	III	Providing a form of Marriage for persons who do not profess the Christian, Jewish, Hindu, Muhammadan, Parsi, Buddhist, Sikh or Jaina religion.	The Special Marriage Act, 1872.	

THE SCHEDULE—*contd.*

1	2	3	4	5
Year.	No.	Subject.	Short Title.	Remarks.
1872	XIX	Amending the definition of 'Coin' in the Indian Penal Code.	The Indian Penal Code Amendment Act, 1872.	
1875	V	Removing doubts as to the rights and liabilities of certain native soldiers.	The Unattested Sepoys Act, 1875.	
"	X	Regulating the Procedure of the High Courts in the exercise of their original criminal jurisdiction.	The Advocate General's (Powers) Act, 1895.	The whole Act has been repealed except two sections (144 and 146), which give the Advocate General power to exhibit an information and enter a *nolle prosequi*.
"	XIII	Amending the Law relating to Probates and Letters of Administration.	The Indian Succession Law Amendment Act, 1875.	The Act amends Act X of 1865 and also Act VII of 1870.
1876	XVI	Amending the Stage-Carriages Act ...	The Stage-Carriages Act (1861) Amendment Act, 1876.	*Cf.* Act XVI of 1861.
1877	II	Amending Act XIII of 1875 ...	The Indian Succession Law Amendment Act, 1877.	The Act defines the expression "High Court" in Act X of 1865 as amended by Act XIII of 1875.
"	IV	Regulating the procedure and increasing the jurisdiction of the Courts of Magistrates in the Presidency-towns.	The Presidency Magistrates (Court-fees) Act, 1877.	The whole Act has been repealed except one section (57), which fixes the fee for a summons or warrant issued by a Presidency Magistrate and empowers a Presidency Magistrate to remit payment.
1879	XII	Amending the Registration Act, 1877, and the Limitation Act, 1877.	The Registration and Limitation Acts Amendment Act, 1879.	
1882	VIII	Amending the Indian Penal Code ...	The Indian Penal Code Amendment Act, 1882.	
1883	II	Amending the Elephants Preservation Act, 1879.	The Elephants Preservation Act (1879) Amendment Act, 1883.	*See* Act VI of 1879.
1884	I	Amending the Law relating to the granting of honorary degrees by the Universities at Calcutta, Madras and Bombay.	The Indian Universities (Honorary Degrees) Act, 1884.	*Cf.* Act XLVII of 1860.
1885	III	Amending the Transfer of Property Act, 1882.	The Transfer of Property Act (1882) Amendment Act, 1885.	

THE SCHEDULE—*contd.*

1	2	3	4	5
Year.	No.	Subject.	Short Title.	Remarks.
1885	IX	Amending the Excise Act, 1881, the Bengal Excise Act, 1878, and the Sea Customs Act, 1878.	The Excise and Sea Customs Law Amendment Act, 1885.	
"	XV	Amending the Local Authorities Loan Act, 1879.	The Local Authorities Loan Act (1879) Amendment Act, 1885.	
1886	II	Imposing a tax on income derived from sources other than agriculture.	The Indian Income-tax Act, 1886.	
"	IV	Amending section 265 of the Indian Contract Act, 1872.	The Indian Contract Act (1872) Amendment Act, 1886.	
"	X	Amending the Code of Criminal Procedure, 1882, and certain other Acts.	The Indian Criminal Law Amendment Act, 1886.	This Act amends Act X of 1882, Bombay Act VII of 1867, Act XLV of 1860 and Act V of 1871.
"	XVIII	Amending Act XXXVI of 1858 ...	The Indian Lunatic Asylums Act (1858) Amendment Act, 1886.	*Cf.* Act XXXVI of 1858.
1887	II	Amending the Sea Customs Act, 1878, the Excise Act, 1881, and the Indian Tariff Act, 1882.	The Sea Customs Act (1878) Amendment Act, 1887.	Acts XXII of 1881 and XI of 1882 have both been repealed.
"	III	Amending the Indian Evidence Act, 1872.	The Indian Evidence Act (1872) Amendment Act, 1887.	
"	V	Amending the Code of Criminal Procedure, 1882.	The Criminal Procedure Code (1882) Amendment Act, 1887.	
"	VI	Amending the Indian Companies Act, 1882.	The Indian Companies Act (1882) Amendment Act, 1887.	
1888	I	Amending the Indian Stamp Act, 1879	The Indian Stamp Act (1879) Amendment Act, 1888.	
"	II	Providing for the levy of a Customs-duty on Petroleum.	The Petroleum (Customs-duty) Act, 1888.	
"	VIII	Removing doubts as to the legality of the levy of certain Tolls.	The Indian Tolls Act, 1888.	
"	X	Amending the Code of Civil Procedure and the Presidency Small Cause Courts Act, 1882.	The Presidency Small Cause Courts Law Amendment Act, 1888.	

THE SCHEDULE—*contd.*

1	2	3	4	5
Year.	No.	Subject.	Short Title.	Remarks.
1888	XI	Making an addition to the Indian Telegraph Act, 1885.	The Indian Telegraph (Presidency-towns) Act, 1888.	The section added (34) provides for the application of Act XV of 1885 to the Presidency-towns and Rangoon.
„	XVII	Amending the Indian Marine Act, 1887	The Indian Marine Act (1887) Amendment Act, 1888.	
1889	VI	Amending the Indian Succession Act, 1865, the Probate and Administration Act, 1881, the Court-fees Act, 1870, and the Indian Stamp Act, 1879, and making provision with respect to certain matters.	The Indian Succession Law Amendment Act, 1889.	
„	VIII	Amending the Sea Customs Act, 1878, and the Indian Tariff Act, 1882.	The Sea Customs Act (1878) Amendment Act, 1889.	Act XI of 1882 has been repealed.
„	XX	Amending Act XXXVI of 1858 ...	The Indian Lunatic Asylums Act (1858) Amendment Act, 1889.	*Cf.* Act XVIII of 1886.
1890	II	Amending Acts XVII of 1864, X of 1865, II of 1874 and V of 1881.	The Indian Succession Law Amendment Act, 1890.	
„	III	Amending Acts VI and VII of 1884 ...	The Indian Steamships Law Amendment Act, 1890.	
„	X	Amending Act XXV of 1867 ...	The Press and Registration of Books Act (1867) Amendment Act, 1890.	
„	XIV	Amending the Schedule to the Petroleum Act, 1886.	The Petroleum Act (1886) Amendment Act, 1890.	
„	XVI	Amending the Births, Deaths and Marriages Registration Act, 1886.	The Births, Deaths and Marriages Registration Act (1886) Amendment Act, 1890.	
„	XVIII	Amending the Indian Emigration Act, 1883.	The Indian Emigration Act (1883) Amendment Act, 1890.	
„	XIX	Amending the Indian Salt Act, 1882 ...	The Indian Salt Act (1882) Amendment Act, 1890.	
1891	I	Amending the Cattle-trespass Act, 1871, and incorporating therein Act XVIII of 1883.	The Cattle-trespass Act (1871) Amendment Act, 1891.	Act XVIII of 1883 amended Act I of 1871.
„	II	Amending the Indian Christian Marriage Act, 1872.	The Indian Christian Marriage Act (1872) Amendment Act, 1891.	

THE SCHEDULE—*contd.*

1	2	3	4	5
Year.	No.	Subject.	Short Title.	Remarks.
1891	III	Amending the Indian Evidence Act, 1872, and the Code of Criminal Procedure, 1882.	The Indian Evidence Act (1872) Amendment Act, 1891.	Only one small addition was made to the Code by this Act and the section making it will soon be repealed on the revision of the Code.
"	IV	Amending the Code of Criminal Procedure, 1882.	The Criminal Procedure Code (1882) Amendment Act, 1891.	
"	IV	Amending and supplementing the Indian Ports Act, 1889.	The Indian Ports Act, 1891.	
"	VI	Amending certain Acts respecting Indian Merchant Shipping.	The Indian Merchant Shipping Law Amendment Act, 1891.	This Act amended Acts I of 1859, VII of 1880 and V of 1883.
"	VII	Amending Act X of 1841 ...	The Indian Registration of Ships Act (1841) Amendment Act, 1891.	*Cf.* Act XI of 1850.
"	IX	Amending the Indian Merchandise Marks Act, 1889, and the Sea Customs Act, 1878.	The Indian Merchandise Marks and Sea Customs Acts Amendment Act, 1891.	
"	X	Amending the Indian Penal Code and the Code of Criminal Procedure, 1882.	The Indian Criminal Law Amendment Act, 1891.	
"	XIII	Amending the Inland Steam-vessels Act, 1884.	The Inland Steam-vessels Act (1884) Amendment Act, 1891.	
1892	II	Validating certain marriages solemnized under Part VI of the Indian Christian Marriage Act, 1872.	The Marriages' Validation Act, 1892.	
"	VI	Amending the Indian Limitation Act, 1877, and the Code of Civil Procedure.	The Indian Limitation Act and Civil Procedure Code Amendment Act, 1891.	
1893	V	Legalising in certain cases the execution within British India of capital sentences which have been passed by British Courts exercising in or with respect to territory beyond the limits of British India Jurisdiction which the Governor General has in such territory.	The Foreign Jurisdiction (Capital Sentences) Act, 1893.	
1894	II	Amending the Indian Ports Act, 1889 ...	The Indian Ports Act (1889) Amendment Act, 1894.	
"	III	Amending the Code of Criminal Procedure, 1882, and the Indian Penal Code.	The Indian Criminal Law Amendment Act, 1894.	
"	VI	Amending the Indian Stamp Act, 1879, with respect to Policies of Sea and Fire Insurance and Sale-certificates.	The Indian Stamp Act Amendment Act, 1894.	

THE SCHEDULE—*contd.*

1	2	3	4	5
Year.	No.	Subject.	Short Title.	Remarks.
1894	VII	Amending the Prisoners Act, 1871 ...	The Prisoners Act (1871) Amendment Act, 1894.	
	X	Amending the Code of Criminal Procedure, 1882.	The Criminal Procedure Code (1882) Amendment Act, 1894.	
1895	III	Amending the Indian Penal Code, Act VI of 1864 and the Indian Post-office Act, 1866.	The Indian Criminal Law Amendment Act, 1895.	Act XIV of 1866 is about to be repealed and re-enacted, and section 7 of this Act, which amends it, will, therefore, soon be repealed and had better be ignored.
	IV	Amending sections 366 and 371 of the Code of Criminal Procedure, 1882.	The Criminal Procedure Code (1882) Amendment Act, 1895.	
	VII	Amending certain sections of the Code of Civil Procedure and the Punjab Laws Act, 1872.	The Punjab Laws Act Amendment Act, 1895.	One of the three amendments made in the Code is with reference to the Punjab Chief Court. As the Code is under revision, it may be ignored in the short title.
,,	VIII	Amending Act V of 1861 (*an Act for the Regulation of Police*).	The Police Act (1861) Amendment Act, 1895.	*Cf.* Act V of 1861.
,,	XIII	Amending sections 632 and 652 of the Code of Civil Procedure.	The Civil Procedure Code Amendment Act, 1895.	
1896	I	Amending the Indian Emigration Act, 1883.	The Indian Emigration Act (1883) Amendment Act, 1896.	
,,	III	Amending the Indian Tariff Act, 1894 ...	The Indian Tariff Act (1894) Amendment Act, 1896.	
,,	IV	Amending the Indian Ports Act, 1889 ...	The Indian Ports Act (1889) Amendment Act, 1896.	
,,	V	Amending the Foreign Jurisdiction and Extradition Act, 1879.	The Foreign Jurisdiction and Extradition Act (1879) Amendment Act, 1896.	
,,	VI	Amending the Indian Penal Code ...	The Indian Penal Code Amendment Act, 1896.	
,,	VII	Amending the Presidency Small Cause Courts Act, 1882.	The Presidency Small Cause Courts Act (1882) Amendment Act, 1896.	

THE SCHEDULE—*concld.*

1	2	3	4	5
Year.	No.	Subject.	Short Title.	Remarks.
1896	IX	Amending the Indian Railways Act, 1890	The Indian Railways Act (1890) Amendment Act, 1896.	
"	XI	Amending the Legal Practitioners Act, 1879.	The Legal Practitioners Act, 1896.	This Act made important substantive changes in Act XVIII of 1879.
"	XIII	Amending the Code of Criminal Procedure, 1882.	The Criminal Procedure Code (1882) Amendment Act, 1896.	
"	XV	Amending the Glanders and Farcy Act, 1879.	The Glanders and Farcy Act (1879) Amendment Act, 1896.	
"	XVI	Amending the Indian Post-office Act, 1866.	The Indian Post-office Act (1866) Amendment Act, 1896.	
1897	I	Amending Act XXXVII of 1850 (*for regulating Inquiries into the behaviour of Public Servants*).	The Public Servants (Inquiries) Act (1850) Amendment Act, 1897.	
"	XIII	Amending the Indian Stamp Act, 1879	The Indian Stamp Act (1879) Amendment Act, 1897.	

STATEMENT OF OBJECTS AND REASONS.

IT is convenient and in accordance with the present practice in England that every Act should be capable of being cited by means of a short title. This Bill has accordingly been drawn on the lines of the Short Titles Act, 1896 (59 & 60 Vict., c. 14), with the object of furnishing with such titles those general Acts of the Governor General in Council which are now deficient in this respect. A new edition of the general Acts is now in preparation, and with these Acts alone the present measure is concerned, all others being left to be dealt with hereafter when new editions of the local Codes are taken in hand.

The 26th June, 1897.

M. D. CHALMERS.

J. M. MACPHERSON,

Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 1st July, 1897:

NO. 10 OF 1897.

A Bill to further amend the Court-fees Act, 1870.

WHEREAS it is expedient to further amend the Court-fees Act, 1870; It is hereby enacted as follows:

VII of 1870.

Short title and commencement.

1. (*1*) This Act may be called the Court-fees Act (1870) Amendment Act, 1897; and

(*2*) It shall come into force at once.

VII of 1870.

Addition of two new sections after section 19-G, Act VII, 1870.

2. After section 19-G of the Court-fees Act, 1870, the following sections shall be added, namely:

Power for Chief Revenue-officer of district to inspect records and prove under-valuation of estate.

"19-H. (*1*) The Chief Revenue-officer of the district may at any time inspect, or cause to be inspected, the record of any case in which application for probate or letters of administration has been made to a Court within his district, and if, on such inspection or otherwise, he is of opinion that the petitioner has underestimated the value of the estate of the deceased, he may require the Court before which such application is pending, to hold an inquiry into the true value of the estate.

(*2*) Every Court, when so required as aforesaid, shall hold an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the estate of the deceased should have been estimated.

(*3*) For the purposes of any such inquiry the Court may examine the petitioner for probate or letters of administration on oath (whether in person or by commission), and may take such further evidence as may be produced before it, either by such Revenue-officer or by such petitioner, to prove the true value of the estate."

Mode of collecting Court-fees on probates or letters of administration.

"19-J. (*1*) Every application for probate or letters of administration must be accompanied by a deposit of a sum equal to the fee chargeable under this Act in respect of probate or letters of administration.

(*2*) If the application is allowed, the sum deposited under sub-section (*1*) shall be expended, under the direction of the Court, in the purchase of the stamp to be used for denoting the fee chargeable as aforesaid.

(*3*) Any sum deposited under sub-section (*1*) and not expended under sub-section (*2*) shall be refunded to the depositor."

STATEMENT OF OBJECTS AND REASONS.

Under Act VII of 1870, a certain percentage is leviable by way of court-fee on the value, as estimated by the petitioner, of an estate in respect of which a grant of probate or letters of administration is made. Chapter III-A of the same Act, as amended by Acts XIII of 1875 and VIII of 1890, makes provision for a refund where the petitioner pays what turns out to be too high a fee, and also, in the converse case of his paying at the time of his application for probate or letters of administration a fee calculated on too low an estimate of the assets likely to come to his hands, for the subsequent levy of the difference between what he has actually paid and what he ought to have paid.

2. There is, however, no means provided by which the Revenue Officers of Government can check the sufficiency of a petitioner's valuation, and it is proposed by this Bill to remove what experience has shown to be a defect in the law of some practical importance, by adding to the Court-fees Act, 1870 (VII of 1870), a section enabling the Chief Revenue Officer of the district, to inspect the records of any case in which application for probate or letters of administration has been made, and to prove in court any undervaluation of the estate concerned.

3. It is further proposed to insert in the same Act a provision similar to that contained in section 14 of the Succession Certificate Act, 1889 (VII of 1889), so as to secure, at the time of application for probate or letters of administration, the payment of the fee chargeable in respect of the subsequent grant thereof. As the law now stands, the duty is payable, not on the application for, but on the grant of, probate or letters of administration. A person to whom sections 187 and 190 of the Indian Succession Act, 1865 (X of 1865), do not apply and who is not bound to produce probate or letters of administration to establish his rights in succession may attain all that he desires by merely obtaining on his application an order for the grant of probate or letters of administration, without actually taking out, and paying the fees prescribed for, the probate or letters of administration applied for. This result cannot, obviously, have been contemplated, and the latter part of clause 2 of the Bill is intended to guard against it.

The 26th June, 1897.

J. WOODBURN.

J. M. MACPHERSON,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, JULY 10, 1897.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced in the Council of the Governor General of India for making Laws and Regulations, Reports of Select Committees presented to the Council, and Bills published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 8th July, 1897:

NO. 11 OF 1897.

A Bill to repeal the Cantonments Act Amendment Act, 1895, and to amend the Cantonments Act, 1889.

WHEREAS it is expedient to repeal the Cantonments Act Amendment Act, 1895, and to amend the Cantonments Act, 1889: It is hereby enacted as follows: V of 1895. XIII of 1889.

1. (*1*) This Act may be called the Cantonments Act, 1897, and

Title and commencement.

(*2*) It shall come into force at once.

Repeal of Act V of 1895.

2. The Cantonments Act Amendment Act, 1895, is hereby repealed.

Amendment of section 31 of Act XIII of 1889.

3. In section 31 of the Cantonments Act, 1889, for the words "a commanding officer" the words "a commanding, medical or other officer" shall be substituted.

STATEMENT OF OBJECTS AND REASONS.

The second and third are the operative clauses in this Bill. The second clause proposes to repeal Act V of 1895, which imposed restrictions on the rule-making power conferred by section 26 of the Cantonments Act, 1889 (XIII of 1889). The removal of these restrictions will restore to the Governor General in Council the power to make rules to check the spread of venereal diseases in cantonments, and will give him the same powers in respect of venereal diseases that he has in the case of other contagious and infectious disorders.

The third clause merely extends to medical and other officers, the same protection in the performance of their duties as is already given to cantonment authorities and commanding officers.

The 7th July, 1897.

M. D. CHALMERS.

J. M. MACPHERSON,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, SEPTEMBER 4, 1897.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced in the Council of the Governor General of India for making Laws and Regulations, Reports of Select Committees presented to the Council, and Bills published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 2nd September, 1897:

NO. 12 OF 1897.

A Bill to further amend the Stage-Carriages Act, 1861.

WHEREAS it is expedient to further amend the Stage-Carriages Act, 1861; It is hereby enacted as follows:

XVI of 1861.

1. This Act may be called the Stage-Carriages Act (1861) Amendment Act, 1897.

Short title.

2. The proviso to section 1 of the Stage-Carriages Act, 1861, is repealed.

XVI of 1861. Repeal of proviso to section 1, Act XVI, 1861.

3. After section 20 of the said Act the following section shall be added, namely:

Addition of new section after section 20, Act XVI, 1861.

"20 A. (1) The Local Government may, by notification in the local official gazette, make rules to carry out the purposes and objects of this Act in the territories under its administration or any part of the said territories.

Power to make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may—

(a) prescribe forms for licenses under this Act, and the conditions on which they may be granted, and the cases in which they may be revoked;

(b) provide for the inspection of stage-carriages; and

(c) regulate the number and length of the stages for which horses may be driven in stage-carriages and the manner in which they shall be harnessed and yoked.

(3) In making any rule under this section the Local Government may direct that a breach thereof shall be punishable with fine which may extend to one hundred rupees."

STATEMENT OF OBJECTS AND REASONS.

THE application of the Stage-Carriages Act, 1861 (XVI of 1861), is, by the proviso to section 1, limited to carriages ordinarily used for journeys of more than twenty miles. This restriction has been found to be inconvenient, as stage-carriages which ought to be subject to regulation, not infrequently ply for shorter distances, and it is, therefore, proposed, by clause 2 of the Bill, to repeal the proviso above referred to.

2. The Act has also been found defective in practice owing to the absence of any rule-making power by means of which to supplement its provisions. Experience has demonstrated the necessity for auxiliary rules to regulate such matters of detail as the length of the stages for which a horse may be driven in a licensed carriage, and, generally, to guide the executive in carrying the law into effect. Clause 3 of the Bill is designed to confer the necessary power in this respect on the Local Government.

The 3rd August, 1897.

J. WOODBURN.

J. M. MACPHERSON,
Secretary to the Government of India.

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, OCTOBER 2, 1897.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced in the Council of the Governor General of India for making Laws and Regulations, Reports of Select Committees presented to the Council, and Bills published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 1st October, 1897:

NO. 13 OF 1897.

A Bill to amend the Oudh Courts Act, 1891.

WHEREAS it is expedient to amend the Oudh Courts Act, 1891; It is hereby enacted as follows:

XIV of 1891.

1. (*1*) This Act may be called the Oudh Courts Act (1891) Amendment Act, 1897; and

Short title and commencement.

(*2*) It shall come into force at once.

2. (*1*) In section 4 of the Oudh Courts Act, 1891 (hereinafter referred to as "the said Act"), after sub-section (*1*) the following sub-section shall be inserted, namely:

XIV of 1891.

Amendment of section 4, Act XIV, 1891.

"(*2*) The Local Government, with the like sanction and in the like manner, may also appoint such person as it thinks fit to be Second Additional Judicial Commissioner, and to exercise jurisdiction, as such Second Additional Judicial Commissioner, in the said Court."

(*2*) Sub-section (*2*) of the same section shall be re-numbered as sub-section (*3*).

3. For section 5 of the said Act, the following section shall be substituted, namely:

Substitution of new section for section 5, Act XIV, 1891.

"5. (*1*) Subject to the other provisions of this Act, an Additional Judicial Commissioner shall exercise the same jurisdiction as the Judicial Commissioner may exercise under any enactment for the time being in force, but only in such cases as the Judicial Commissioner may direct.

Jurisdiction of Additional Judicial Commissioner and distribution of business.

"(*2*) The Judicial Commissioner may, from time to time transfer any case with respect to which he may have directed an Additional Judicial Commissioner to exercise jurisdiction and of which the hearing before such Additional Judicial Commissioner has not commenced, for hearing and disposal to his own file or to the file of the other Additional Judicial Commissioner (if any).

"(*3*) Where this Act or any other enactment for the time being in force requires a case to be heard by a bench of two Judges of the Court of the Judicial Commissioner of Oudh and that Court for the time being consists of three Judges, the Judicial Commissioner shall, from time to time, determine what two Judges shall constitute such bench."

4. In section 6 of the said Act, for the word "the", where it occurs before the words "Additional Judicial Commissioner", the word "an" shall be substituted.

Amendment of section 6, Act XIV, 1891.

5. (*1*) In section 7 of the said Act, sub-section (1) is repealed and, in sub-section (*2*), for the first fourteen words the following shall be substituted, namely:

Amendment of section 7, Act XIV, 1891.

"If the Court of the Judicial Commissioner of Oudh for the time being consists of only two Judges and any such case as is referred to in

section 377 of the Code of Criminal Procedure, 1882", X of 1882.

6. In section 8 of the said Act, for the word "the," where it first occurs before the words "Additional Judicial Commissioner," the word "an" shall be substituted, and for the words "the Judicial Commissioner and the Additional Judicial Commissioner sitting together" the words "a bench consisting of two Judges of the Court of the Judicial Commissioner of Oudh" shall be substituted. Amendment of section 8, Act XIV, 1891.

7. In section 9 of the said Act, for the word "Whenever" the following shall be substituted, namely: Amendment of section 9, Act XIV, 1891.

"If the Court of the Judicial Commissioner of Oudh for the time being consists of only two Judges and"

8. After section 11 of the said Act, the following section shall be added, namely: Addition of new section after section 11, Act XIV, 1891.

[Cf. XI of 1889, s. 92.] "12. The Judicial Commissioner may, from time to time, with the previous sanction of the Local Government, by notification in the official Gazette, make rules to provide for— Power to make rules as to judgments, evidence and affidavits.

(1) the recording of judgments, orders and sentences;

(2) the taking down of the evidence of witnesses; and

(3) the admission of affidavits as evidence of the matters to which such affidavits relate;

and the Court of the Judicial Commissioner of Oudh shall, on the publication of any such rules, be bound thereby instead of by such parts of the Code of Criminal Procedure, 1882, and the Code of Civil Procedure, as relate to the mode of recording judgments, orders and sentences and of taking down the evidence of witnesses, and may, in accordance with such rules, permit the admission of affidavits as evidence of the matters aforesaid." X of 1882. XIV of 1882.

9. (1) In section 1 of the said Act, the words and figures "and (3) It shall come into force on the first day of April, 1891" are repealed. Repeal of certain other parts of Act XIV, 1891.

(2) Section 2 and sub-sections (1) and (2) of section 11 of the said Act are repealed.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to afford early relief to the Court of the Judicial Commissioner of Oudh by making provision for the appointment of a second Additional Judicial Commissioner. The existence of heavy arrears in that Court has been brought to the notice of the Government of India, and the statistics furnished show that the number of suits instituted tends in an increasing degree to exceed the number disposed of, and that the Court at its present strength cannot possibly overtake the work that has accumulated steadily during the past five years. It is proposed, therefore, to amend the Oudh Courts Act, 1891 (XIV of 1891), so as to take power to strengthen the Court for the time being by the appointment of a third Judge.

2. The details of the Bill are, where necessary, explained in the annexed Notes on Clauses.

The 25th September, 1897. J. WOODBURN.

Notes on Clauses.

Clause 2.—It is here proposed to insert in section 4 of the Oudh Courts Act, 1891 (XIV of 1891), an enabling provision taking power for the Local Government, with the previous sanction of the Governor General in Council, to appoint a second Additional Judicial Commissioner to the Court of the Judicial Commissioner of Oudh.

Clause 3.—By this clause it is proposed to recast section 5 of the Act in order to make its provisions equally applicable when the Court consists of the Judicial Commissioner and two Additional Judicial Commissioners.

Clause 5.—When the Court consists of three Judges the provisions of section 378 of the Code of Criminal Procedure, 1882, will at once apply in cases submitted for the confirmation of capital sentences and no special provisions on the subject will be required. It seems unnecessary, in view of the definition of "High Court" in that Code, to declare that the Court shall be deemed to be a High Court, and sub-section (1) of section 7 may, it is thought, be repealed. Sub-section (2), in the amended form proposed, will supply the requisite special provisions in cases of a difference of opinion on references under section 377 of the Code when the Court consists of only two Judges.

Clause 7.—The preceding remarks regarding clause 5 will also explain the amendments here suggested. As soon as a third Judge is appointed to the Court, the provisions of sections 429 and 439 of the Code of Criminal Procedure, 1882, as well as those of section 575 of the Code of Civil Procedure, will apply automatically, and all that is necessary is to make it clear that, if and so long as the Court consists of only two Judges, the arrangements made by section 9 of the existing Act must continue to be observed.

Clause 8.—The section, the addition of which to the Act is here contemplated, is based upon section 92 of the Lower Burma Courts Act, 1889 (XI of 1889). It seems calculated to facilitate the disposal of work in the Judicial Commissioner's Court by enabling the Judicial Commissioner, with the previous sanction of the Local Government, to frame rules dispensing with the fuller procedure required by the general law.

J. M. MACPHERSON,
Secretary to the Government of India.

The Gazette of India.

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SIMLA, SATURDAY, OCTOBER 9, 1897.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced in the Council of the Governor General of India for making Laws and Regulations, Reports of Select Committees presented to the Council, and Bills published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 1st October, 1897:

NO. 13 OF 1897.

A Bill to amend the Oudh Courts Act, 1891.

WHEREAS it is expedient to amend the Oudh Courts Act, 1891; It is hereby enacted as follows:

XIV of 1891.

Short title and commencement.

1. (*1*) This Act may be called the Oudh Courts Act (1891) Amendment Act, 1897; and

(*2*) It shall come into force at once.

XIV of 1891.

Amendment of section 4, Act XIV, 1891.

2. (*1*) In section 4 of the Oudh Courts Act, 1891 (hereinafter referred to as "the said Act"), after sub-section (*1*) the following sub-section shall be inserted, namely:

"(*2*) The Local Government, with the like sanction and in the like manner, may also appoint such person as it thinks fit to be Second Additional Judicial Commissioner, and to exercise jurisdiction, as such Second Additional Judicial Commissioner, in the said Court."

(*2*) Sub-section (*2*) of the same section shall be re-numbered as sub-section (*3*).

Substitution of new section for section 5, Act XIV, 1891.

3. For section 5 of the said Act, the following section shall be substituted, namely:

Jurisdiction of Additional Judicial Commissioner and distribution of business.

"5. (*1*) Subject to the other provisions of this Act, an Additional Judicial Commissioner shall exercise the same jurisdiction as the Judicial Commissioner may exercise under any enactment for the time being in force, but only in such cases as the Judicial Commissioner may direct.

"(*2*) The Judicial Commissioner may, from time to time transfer any case with respect to which he may have directed an Additional Judicial Commissioner to exercise jurisdiction and of which the hearing before such Additional Judicial Commissioner has not commenced, for hearing and disposal to his own file or to the file of the other Additional Judicial Commissioner (if any).

"(*3*) Where this Act or any other enactment for the time being in force requires a case to be heard by a bench of two Judges of the Court of the Judicial Commissioner of Oudh and that Court for the time being consists of three Judges, the Judicial Commissioner shall, from time to time, determine what two Judges shall constitute such bench."

Amendment of section 6, Act XIV, 1891.

4. In section 6 of the said Act, for the word "the", where it occurs before the words "Additional Judicial Commissioner", the word "an" shall be substituted.

Amendment of section 7, Act XIV, 1891.

5. (*1*) In section 7 of the said Act, sub-section (*1*) is repealed, and, in sub-section (*2*), for the first fourteen words the following shall be substituted, namely:

"If the Court of the Judicial Commissioner of Oudh for the time being consists of only two Judges and any such case as is referred to in

section 377 of the Code of Criminal Procedure, 1882",

X of 1882.

6. In section 8 of the said Act, for the word "the," where it first occurs before the words "Additional Judicial Commissioner," the word "an" shall be substituted, and for the words "the Judicial Commissioner and the Additional Judicial Commissioner sitting together" the words "a bench consisting of two Judges of the Court of the Judicial Commissioner of Oudh" shall be substituted.

Amendment of section 8, Act XIV, 1891.

7. In section 9 of the said Act, for the word "Whenever" the following shall be substituted, namely:

Amendment of section 9, Act XIV, 1891.

"If the Court of the Judicial Commissioner of Oudh for the time being consists of only two Judges and"

8. After section 11 of the said Act, the following section shall be added, namely:

Addition of new section after section 11, Act XIV, 1891.

[*Cf.* XI of 1889, s. 92.]

"12. The Judicial Commissioner may, from time to time, with the previous sanction of the Local Government, by notification in the official Gazette, make rules to provide for—

Power to make rules as to judgments, evidence and affidavits.

(*1*) the recording of judgments, orders and sentences;

(*2*) the taking down of the evidence of witnesses; and

(*3*) the admission of affidavits as evidence of the matters to which such affidavits relate;

and the Court of the Judicial Commissioner of Oudh shall, on the publication of any such rules, be bound thereby instead of by such parts of the Code of Criminal Procedure, 1882, and the Code of Civil Procedure, as relate to the mode of recording judgments, orders and sentences and of taking down the evidence of witnesses, and may, in accordance with such rules, permit the admission of affidavits as evidence of the matters aforesaid."

X of 1882. XIV of 1882.

9. (*1*) In section 1 of the said Act, the words and figures "and (*3*) It shall come into force on the first day of April, 1891" are repealed.

Repeal of certain other parts of Act XIV, 1891.

(*2*) Section 2 and sub-sections (*1*) and (*2*) of section 11 of the said Act are repealed.

STATEMENT OF OBJECTS AND REASONS.

THE object of this Bill is to afford early relief to the Court of the Judicial Commissioner of Oudh by making provision for the appointment of a second Additional Judicial Commissioner. The existence of heavy arrears in that Court has been brought to the notice of the Government of India, and the statistics furnished show that the number of suits instituted tends in an increasing degree to exceed the number disposed of, and that the Court at its present strength cannot possibly overtake the work that has accumulated steadily during the past five years. It is proposed, therefore, to amend the Oudh Courts Act, 1891 (XIV of 1891), so as to take power to strengthen the Court for the time being by the appointment of a third Judge.

2. The details of the Bill are, where necessary, explained in the annexed Notes on Clauses.

The 25th September, 1897. J. WOODBURN.

Notes on Clauses.

Clause 2.—It is here proposed to insert in section 4 of the Oudh Courts Act, 1891 (XIV of 1891), an enabling provision taking power for the Local Government, with the previous sanction of the Governor General in Council, to appoint a second Additional Judicial Commissioner to the Court of the Judicial Commissioner of Oudh.

Clause 3.—By this clause it is proposed to recast section 5 of the Act in order to make its provisions equally applicable when the Court consists of the Judicial Commissioner and two Additional Judicial Commissioners.

Clause 5.—When the Court consists of three Judges the provisions of section 378 of the Code of Criminal Procedure, 1882, will at once apply in cases submitted for the confirmation of capital sentences and no special provisions on the subject will be required. It seems unnecessary, in view of the definition of "High Court" in that Code, to declare that the Court shall be deemed to be a High Court, and sub-section (*1*) of section 7 may, it is thought, be repealed. Sub-section (*2*), in the amended form proposed, will supply the requisite special provisions in cases of a difference of opinion on references under section 377 of the Code when the Court consists of only two Judges.

Clause 7.—The preceding remarks regarding clause 5 will also explain the amendments here suggested. As soon as a third Judge is appointed to the Court, the provisions of sections 429 and 439 of the Code of Criminal Procedure, 1882, as well as those of section 575 of the Code of Civil Procedure, will apply automatically, and all that is necessary is to make it clear that, if and so long as the Court consists of only two Judges, the arrangements made by section 9 of the existing Act must continue to be observed.

Clause 8.—The section, the addition of which to the Act is here contemplated, is based upon section 92 of the Lower Burma Courts Act, 1889 (XI of 1889). It seems calculated to facilitate the disposal of work in the Judicial Commissioner's Court by enabling the Judicial Commissioner, with the previous sanction of the Local Government, to frame rules dispensing with the fuller procedure required by the general law.

J. M. MACPHERSON,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 1st October, 1897:

NO. 14 OF 1897.

[*The numbers given in brackets on the margin of the clauses of this Bill refer to the sections of Act IX of 1883.*]

A Bill to consolidate and amend the Law relating to Agricultural Tenancies in the Central Provinces.

WHEREAS it is expedient to consolidate and amend the law relating to agricultural tenancies in the Central Provinces; It is hereby enacted as follows:

CHAPTER I.

PRELIMINARY.

[1.] **1.** (*1*) This Act may be called the Central Provinces Tenancy Act, 1898. Short title, extent and commencement.

(*2*) It extends to all the territories for the time being administered by the Chief Commissioner of the Central Provinces; and

(*3*) It shall come into force *at once*.

[3.] **2.** In this Act, unless there is anything repugnant in the subject or context,— Definitions.

(*1*) *the expressions "agricultural year," "málik makbúzá," "sír-land," "survey-number," "record-of-rights" and "village" have the meanings assigned to them, respectively, in the Central Provinces Land-revenue Act, 1881;* XVIII of 1881.

[(6).] (*2*) "arrear" means an instalment or part of an instalment of rent which is not paid on or before the date on which it is payable:

[(7).] (*3*) "holding" means a parcel of land held by a tenant of a landlord under one lease or one set of conditions:

[(8).] (*4*) "improvement" means, with reference to a holding, any work which adds to the letting-value of the holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after execution, made directly beneficial to it:

Explanation I.—It includes the reclaiming, enclosing or clearing of lands for agricultural purposes; but it does not include such embankments, temporary wells and water-channels as are made by tenants in the ordinary course of agriculture; and no work executed by the tenant of a holding is an improvement if it substantially diminishes the value of any other part of the estate of his landlord:

Explanation II.—A work which benefits several holdings may be deemed to be, with respect to each of them, an improvement:

(*5*) "land" means land which is let or occupied for agricultural purposes or for purposes subservient to agriculture, and includes the sites of buildings appurtenant to such land: [(1).]

(*6*) "landlord" means the person of whom a tenant holds land, and to whom the tenant is, or, but for special contract, would be, liable to pay rent for that land: [(3).]

(*7*) "pay", "payable" and "payment", used with reference to rent, include "deliver", "deliverable" and "delivery": [(5).]

(*8*) "rent" means whatever is paid, delivered or rendered, in money, kind or service, by a tenant on account of the use or occupation of land let to him: [4.]

(*9*) "Revenue-officer" and "Settlement-officer", in any provision of this Act, mean, respectively, such Revenue-officer or Settlement-officer appointed under the Central Provinces Land-revenue Act, 1881, as the *Local Government* may, by notification in the *local* official Gazette, direct to discharge the functions of a Revenue-officer or Settlement-officer (as the case may be) under that provision *and* [(9).] XVIII of 1881.

(*10*) "tenant" means a person who holds land of another person, and is, or, but for a special contract, would be, liable to pay rent for that land to that other person. But it does not include a farmer, mortgagee or thíkádár of proprietary rights: [(2).]

Explanation I.—An inferior proprietor is not, as such, a tenant:

Explanation II.—The holder of a survey-number in a village let in farm by the Government, or held by a gaontia in the Sambalpúr district, is a tenant of the farmer or gaontia for the time being;

CHAPTER II.

OF TENANTS GENERALLY.

A.—Classification of Tenants.

[4] **3.** There shall be five classes of tenants, namely:

Classes of tenants.

(*1*) absolute occupancy-tenants;
(*2*) occupancy-tenants;
(*3*) village-service tenants;
(*4*) sub-tenants; *and*
(*5*) ordinary tenants.

B.—Provisions relating to Rent.

[5] **4.** In all suits and proceedings between landlord and tenant, the rent payable for any agricultural year by a tenant in respect of his holding shall be presumed, until the contrary is proved, to be the rent payable in respect of the holding in the agricultural year immediately preceding that year.

Presumption as to amount of rent payable.

[6] **5.** An order fixing, altering or commuting the rent of a holding on an application under this Act may, as the officer making the order thinks fit, take effect from the commencement of the agricultural year next following the date of the application, or from any subsequent day, or, if it is made on the ground of increase, diminution or deterioration of the holding, from the date of that increase, diminution or deterioration, or from any subsequent day.

Date from which order fixing rent operates.

[7] **6.** Rents shall be payable in such instalments and on such dates as the *Local Government* may, by notification in the *local* official Gazette, prescribe, and, in the absence of any such notification applicable to the case, according to the contract between the parties, or, where there is no such contract, according to local usage.

Time for payment of rents.

[8] **7.** When two or more persons are landlords of a tenant in respect of the same holding, the tenant, subject to any rule which the *Local Government* may, by notification in the *local* official Gazette, make in this behalf, and to any contract between the parties, shall not be bound to pay part of the rent of his holding to one of those persons and part to another or others; and, subject as aforesaid, those persons shall, if the tenant so desires, appoint one of their number or some other person to receive the rent.

Rents payable to a number of landlords.

[9] **8.** (*1*) When a landlord refuses to accept any instalment of rent payable in money when tendered to him by a tenant,

(*2*) when a tenant, in the case mentioned in section 7, desires the appointment of a person to receive rent payable in money and the appointment is not made within a reasonable time, and

(*3*) when a tenant in any case is doubtful as to the person entitled to receive rent payable in money,

the tenant may apply to a Revenue-officer for permission to deposit in his Court the amount of rent which he believes to be due; and that officer shall receive the deposit, if it appears to him, after examining the applicant, that he had reasonable grounds for making the application, and that it was made in good faith; and if the applicant pays the fee (if any) chargeable for the issue of the notice next hereinafter referred to.

Power to deposit rent in certain cases with Revenue-officer.

[10] **9.** (*1*) When a deposit has been so received, it shall be deemed to be a payment made by the tenant to his landlord in respect of rent due.

Effect of depositing rent.

(*2*) The officer receiving the deposit shall give notice of the receipt thereof to every person who he has reason to believe claims, or is entitled to, the deposit, and may pay the amount thereof to any person appearing to him to be entitled to the same, or may, if he thinks fit, retain the deposit pending the decision of a Civil Court as to the person so entitled.

(*3*) No suit or other proceeding shall be instituted against the Secretary of State for India in Council, or against any officer of the Government, in respect of anything done by a Revenue-officer under this section; but nothing in this *section* shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid by a Revenue-officer.

[11] **10.** Every tenant from whom, except under any special enactment for the time being in force, anything is levied by his landlord in excess of the rent legally payable, shall be entitled to recover from the landlord such sum as the Court thinks fit, not exceeding five hundred rupees, or, when double the amount or value of what is so levied exceeds five hundred rupees, not exceeding double that amount or value.

Penalty for levy of anything in excess of rent by landlord.

[11A.] **11.** *A payment by a tenant to his landlord shall be presumed, until the contrary is proved, to be a payment on account of rent.*

Presumption as to payments by tenant to landlord.

[12] **12.** If a landlord refuses *to grant* a receipt for rent paid by a tenant, or grants a receipt but refuses or neglects to specify therein the holding, and the period or crop, in respect of which the payment is made, or the amount paid, the tenant shall be entitled to recover from him such sum, not exceeding double the amount or value of the rent so paid, as the Court thinks fit.

Penalty for refusing receipt or giving defective receipt.

[13] **13.** (*1*) Notwithstanding anything in the record-of-rights, but subject to any contract in writing between the parties, the rent payable in money by any tenant may, on the application of his landlord, be enhanced by a Revenue-officer on the ground that an improvement has been made *since the present rent was fixed and* in accordance with this Act by or at the expense of the landlord whereby the productive power of the holding has been increased:

Provided that such improvement was not taken into consideration at the time when the rent was fixed or determined by the Settlement-officer at the current settlement of the local area in which the holding is situate.

(*2*) *When the rent of any tenant has been enhanced under sub-section* (*1*), *a Revenue-officer may at any time, on the application of the tenant, modify or cancel the order for enhancement on the ground that the effect of the improvement in increasing the productive power of the holding has diminished or ceased since the date of the order for enhancement or of the last modification of such order made under this sub-section.*

Enhancement of rent when productive power of holding increased by landlord.

[14.] **14.** When the area of a holding the rent of which is payable in money is increased or diminished by the encroachment of the tenant or the landlord, or by fluvial action or otherwise, or the soil of a holding is, without the fault of the tenant, permanently deteriorated by a deposit of sand or *any* other calamity, a Revenue-officer may, notwithstanding anything in the record-of-rights or any contract between the parties, by order, on the application of the landlord or of the tenant, alter the rent with reference to that increase, diminution or deterioration.

Power to alter rent when holding is increased, diminished or deteriorated.

[15.] **15.** When a landlord grants a lease, or makes any other contract fixing the rent of any holding, and, while the lease or contract is in force,—

(*a*) land-revenue is for the first time made payable in respect of the holding, or

(*b*) land-revenue having been previously payable in respect of it, the revenue payable when the lease or other contract was granted or made is increased or diminished,

a Revenue-officer may, notwithstanding anything in the record-of-rights or any contract between the parties, by order, on the application of the landlord or of the tenant, alter the rent with reference to the revenue.

Power to alter rent in case of new assessment.

[16.] **16.** (*1*) In all cases in which *a tenant, other than an ordinary tenant whose holding consists entirely of sír-land, or than a sub-tenant*, pays rent for a holding in kind, or on the estimated value of a portion of the crop, or at rates varying with the crop, or partly in one of those ways and partly in another or others, the landlord or tenant may, notwithstanding anything in the record-of-rights or any contract between the parties, other than a contract whereby waste-land is let for the purpose of reclamation, apply during the progress of a settlement to a Settlement-officer, or at any other time *to a Revenue-officer*, to commute the rent to a fixed money-rent.

Commutation of rent payable in kind.

(*2*) On the receipt of the application, the officer, *after giving notice of the application to the landlord and hearing him, if he appears, may* determine the sum to be paid as money-rent, and *may, for reasons to be recorded by him in writing*, order that the tenant shall, in lieu of paying his rent in kind, or otherwise as aforesaid, pay the sum so determined.

(*3*) If the application is opposed, the officer may, for reasons to be recorded by him in writing, refuse to grant the same.

[64A.] **17.** (*1*) *Whenever from any cause the payment of the whole or any part of the land-revenue payable in respect of any land is remitted or suspended, a Revenue-officer may, by general or special order, remit or suspend, as the case may be, the payment of the rent of that land to an amount which may bear the same proportion to the whole of the rent payable in respect of the land as the land-revenue of which the payment has been remitted or suspended, bears to the whole of the land-revenue payable in respect of the land:*

Provided that, where the rent is taken by actual division of the produce, no portion of it shall be suspended under this section.

Remission and suspension of rent consequent on like treatment of land-revenue.

(*2*) *An order passed under sub-section* (*1*) *shall not be liable to be contested by suit in any Court.*

(*3*) *No suit shall lie for the recovery of any rent of which the payment has been remitted, or, during the period of suspension, of any rent of which the payment has been suspended, and, so long as a suit does not lie, such rent shall not be legally payable within the meaning of section 10.*

(*4*) *Where the payment of rent has been suspended, the period of suspension shall be excluded in the computation of the period of limitation prescribed for bringing a suit for the recovery of the rent.*

(*5*) *If the landlord collects any rent of which the payment has been remitted, or, before the expiration of the period of suspension, collects any rent of which the payment has been suspended, the whole of the land-revenue remitted in his favour shall become immediately due from him.*

(*6*) *The provisions of this section relating to the remission and suspension of the payment of rent may be applied, as far as may be, to land of which the land-revenue has been wholly or in part released, compounded for or redeemed, in any case in which, if the land-revenue in respect of the land had not been released, compounded for or redeemed, the whole or any part of it might, in the opinion of the Revenue-officer, have been remitted or suspended.*

(*7*) *The provisions of this section relating to rent shall apply also, as far as may be, to revenue and málikáná payable by inferior proprietors and to thiká jámás payable by thikádárs of proprietary rights.*

C.—Commissions for dividing or estimating Crops.

[25.] **18.** Whenever rent is taken by division of the produce, or by estimate or appraisement of the crop, if either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the division, estimate or appraisement, or if there is a dispute about the division of the produce or the quantity or value of the crop, a Revenue-officer may, on the application of either party, issue a commission to such person as the officer thinks fit, directing him to divide, estimate or appraise the crop.

Commission for dividing or estimating crops.

[26.] **19.** (*1*) When a Revenue-officer appoints a commissioner for any of the purposes mentioned in section 26, the officer may, in his discretion, direct the commissioner to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selecting those assessors (if any), and the procedure to be followed in making the division, estimate or appraisement.

Appointment of assessors, etc.

(*2*) The commissioner so appointed shall make the division, estimate or appraisement in accordance with those instructions.

[27.] **20.** (*1*) If in any division under the foregoing provisions either party receives less than the share to which he is entitled, he may, within three months from the date on which the division is completed, institute a suit against the other party to recover the value of the additional portion of the crop due to him at the price which prevailed on that date.

Remedy for error in division.

(*2*) If no such suit is instituted within the said period of three months, the division shall for

all purposes be deemed as between the parties thereto to have been rightly made.

[28.] **21.** (*1*) When a crop has been estimated or appraised under the foregoing provisions, the estimate or appraisement shall be reduced to writing and signed by the commissioner making the same, and shall be submitted to the Revenue-officer by whom the commission was issued.

Procedure when crop has been estimated or appraised.

(*2*) The Revenue-officer shall consider the commissioner's report, and, after such hearing and inquiry (if any) as he may think necessary, shall pass an order thereon either confirming or varying the estimate or appraisement, and that order shall be final.

D.—Of the Landlord's Lien on the Produce of a Holding.

[17.] **22.** In sections 23 to 29 (both inclusive) the produce of a holding means—

Definition of "produce of a holding".

(*a*) crops and other products of the earth standing or ungathered on the holding;

(*b*) crops and other products of the earth which have been grown on the holding and have been reaped or gathered and are deposited on the holding or on a threshing-ground, or are stored, by a tenant of the land on which they have been grown, within the village in which the holding is situate or the tenant resides.

[18.] **23.** Where an arrear *of rent, other than a rent taken by division of the produce or by estimate or appraisement of the crop,* is due in respect of a holding, the landlord may, by notice served as hereinafter provided, prohibit the removal of the produce of the holding:

Power of landlord, by notice, to prohibit removal of produce.

Provided that—

first, such a prohibition shall not be made on account of an arrear which has been due for a longer period than one year, or in respect of any produce which is under attachment by order of any Court; and

secondly, such a prohibition shall not be made more than once in respect of the same produce on account of the same arrear.

[21.] **24.** If, while the notice is in force, the landlord institutes a suit for the recovery of the rent, the notice shall continue in force until the Court trying the suit otherwise directs; and, if the landlord obtains a decree in the suit, the amount of that decree shall be the first charge upon the produce.

Effect of instituting suit for rent while notice is in force.

[20.] **25.** A notice under section 23 shall not prevent any person from reaping, gathering or storing any produce, or doing any other act necessary for its due preservation.

Right to reap, etc., produce not affected.

[19.] **26.** (*1*) Every notice under section 23 shall be in writing, and shall specify the amount of the arrear claimed, the period for which, and the holding in respect of which, it is claimed, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the decree, order or agreement, as the case may be, for the payment of that amount.

Contents and service of notice; time for which it remains in force.

(*2*) The notice shall be served on the person in charge of the produce, and shall remain in force until the rent specified in the notice is paid, or, if that rent is not previously paid, *subject to the provisions of section 24*, until the expiration of thirty-five days from the date of service of the notice.

[22.] **27.** (*1*) If the produce of the holding on which the arrear is due is under attachment by order of a Court, the landlord may apply to the Court to sell the produce and pay to him out of the proceeds of the sale thereof the amount or value of—

Procedure when produce is under attachment.

(*a*) any rent which has fallen due to him in respect of the holding within the year immediately preceding the application; and

(*b*) the instalment of rent falling due next after the time at which in the ordinary course of agriculture the produce would be harvested.

And the Court, if on inquiry it finds the landlord's claim to the whole or any part of the rent to be proved, shall sell the produce or such portion thereof as it may deem necessary, and shall apply the proceeds of the sale, in the first instance, to satisfy the claim.

(*2*) The finding of a Court on an inquiry under this section shall have the force of a decision in a suit between the parties.

[23.] **28.** Where land is sublet and any conflict arises under sections 23 to 27 (both inclusive) between the rights of a superior and of an inferior landlord, the right of the superior landlord shall prevail.

Conflict between rights of superior and inferior landlord.

[24.] **29.** (*1*) Any landlord of a holding who distrains or attempts to distrain the produce of the holding, or prevents or attempts to prevent, otherwise than in accordance with this Act, any person from reaping, gathering, storing, removing or otherwise dealing with any produce of the holding, and

Penalty for illegal distraint by landlord, and for illegal removal of produce.

where a notice in respect of the produce of a holding has been served under section 26 and is in force, any person who, knowing or having reason to believe that the notice is in force, removes, attempts to remove or abets the removal of the produce, except for any of the purposes mentioned in section 25

shall be punish*able* with fine which may extend to five hundred rupees.

(*2*) Nothing in this section, and, except as provided in section 546 of the Code of Criminal Procedure, 1882, no proceeding under this section shall affect the right of any person to recover compensation in a civil suit. X of 1882.

E.—Of Improvements and compensation therefor.

[29.] **30.** (*1*) In respect of the holding of an absolute occupancy-tenant or occupancy-tenant, *or of the holding of an ordinary tenant which does not consist entirely of sir-land*, the tenant, and, in respect of the holding of an ordinary tenant *which does consist entirely of sir-land*, the landlord, shall be entitled to make improvements.

Right to make improvements.

(*2*) *If the landlord of any such holding as is referred to in sub-section* (*1*) *desires that any improvement*

be made in respect of the holding, he may deliver, or cause to be delivered, to his tenant a request in writing calling upon him to make the improvement within a reasonable time, and, if the tenant is unable or neglects to comply with that request, may, subject to such rules of procedure as the *Local Government may*, by notification in the *local* official Gazette, prescribe in this behalf, make the improvement himself.

[30.] **31.** (*1*) If *a tenant, or the person under whom he claims, has made an improvement in respect of his holding* in accordance with this Act or with the landlord's consent otherwise than in accordance with this Act, *he shall not be ejected until he has received compensation for the improvement, unless the improvement was begun by him after the institution of the proceedings which resulted in the decree or order for his ejectment.*

Liability to pay to tenant on ejectment compensation for improvements.

(*2*) *A Court or officer making a decree or order for the ejectment of a tenant shall determine the amount of compensation (if any) due to him under this section, and shall stay execution until the landlord deposits the amount, less any arrears of rent or costs that have been ascertained by the proceedings for such ejectment to be due to him from the tenant.*

(*3*) No compensation shall be claimable under this section for an improvement where the tenant has made the improvement in pursuance of a contract binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and has obtained that advantage.

(*4*) Improvements made by a tenant before *the first day of January, 1884*, in lands other than sir-land, shall be deemed to have been made in accordance with this Act, unless it is shown that the landlord forbade the tenant to make the improvement, and was ready to make it himself.

[31.] **32.** (*1*) The *Local Government* may, by notification in the *local* official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under section *31* for an improvement, such number of assessors as the *Local Government* thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

Assessment of compensation.

(*2*) In estimating the compensation to be awarded under section *31* for an improvement, regard shall be had—

(*a*) to the amount by which the letting-value or the produce, of the holding, or the value of that produce, is increased by the improvement;

(*b*) to the labour and capital required for the making of such an improvement; and

(*c*) to any reduction or remission of rent or other advantage given by the landlord to the tenant in consideration of the improvement.

(*3*) When the amount of the compensation has been assessed, the landlord and tenant may, if they think fit, agree that, instead of being paid wholly in money, it shall be made wholly or partly in some other way.

[32.] **33.** An entry in the record-of-rights of any village or a stipulation in a contract providing—

Avoidance of provisions barring right to make, or be compensated for, improvements.

(*a*) that a landlord shall be entitled to prevent a tenant from making, or to eject him for making, such improvements on his holding as he is entitled to make under this Act, or

(*b*) that a tenant ejected from his holding shall not be entitled to compensation for improvements in any case in which he would, under this Act, be entitled to such compensation,

shall be void.

Miscellaneous.

[33.] **34.** (*1*) Any tenant not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding:

Surrender of holdings.

Provided that, notwithstanding *such* surrender the tenant shall continue to be liable for the agricultural year next following the date of the surrender for the rent of the holding, unless he gives to his landlord, at least thirty days before he surrenders, notice of his intention to surrender;

Provided, also, that, if the tenant is an absolute occupancy-tenant or an occupancy-tenant, any such person as would be entitled to inherit his right in the holding in the event of his death without nearer heirs may, on application to a Revenue-officer made at any time within three years after the date of the surrender, be placed in possession of the holding; and that, as among several persons so entitled and desirous of being placed in possession of the holding, the right to be so placed shall accrue in the order in which such persons would have inherited the right of the tenant in the holding if the tenant had died.

(*2*) *When any such application as aforesaid is made, the Revenue-officer shall issue a notice to all persons who seem to him primâ facie to have a right equal or prior to that of the applicant, and shall, after hearing such of them as appear and any other persons who may apply to be heard in the matter, decide who from among such of them as desire to be placed in possession is first entitled to be so placed.*

(*3*) In the following cases the Court shall presume that notice was *duly* given *as required by the first proviso to sub-section* (*1*), that is to say:

(*a*) if the tenant takes a new holding in the same village from the same landlord during the agricultural year next following the surrender;

(*b*) if the tenant ceases, at least thirty days before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate; and

(*c*) if the landlord himself, at any time during the agricultural year next following the surrender, cultivates or lets to another tenant the holding or any part thereof.

(*4*) A tenant of a survey-number in a village let in farm by the Government, or held by a gaontia in the Sambalpúr District, shall be deemed to have surrendered his holding if he refuses to agree to the rent fixed under this Act for the holding, but shall not continue liable under sub-section (*1*) for the rent of his holding.

[34.] **35.** Any tenant other than an absolute occupancy-tenant who leaves his holding uncultivated and the rent of it unpaid for a period of two years shall, at the expiration of that period, be deemed to have surrendered the holding:

Where land uncultivated and rent unpaid, tenant's right to be deemed surrendered.

Provided that, in reckoning that period, any time during which, owing to an inundation or any other accident to the land beyond the tenant's control, it may have been impossible to cultivate the land, shall be excluded.

[35.] **36.** When a person, at the time of taking a thikâ or farm, is a tenant of any land comprised therein, his interest as tenant shall not be affected by reason only of his taking the thikâ or farm.

Tenant taking thikâ or farm.

[35A.] **37.** Nothing in this Act regarding the rights of an absolute occupancy-tenant, an occupancy-tenant or an ordinary tenant shall be deemed to apply to the tenant of any land situate within the limits of any forest-land or waste-land which has been declared to be a reserved forest under the Indian Forest Act, 1878.

Provisions regarding tenant-right not applicable to tenant of land in reserved forests.

VII of 1878.

CHAPTER III.

OF ABSOLUTE OCCUPANCY-TENANTS.

[36.] **38.** Every person who, *at the commencement of* this Act, is the tenant of any holding in respect of which he, or a person whose rights he has acquired, has been recorded in any record-of-rights made before that day as an "absolute occupancy-raiyat", or in terms equivalent thereto, shall, unless he has parted with his rights, be deemed to be an absolute occupancy-tenant of that holding.

Definition of "absolute occupancy-tenant."

[37.] **39.** (*1*) The rent of the holding of every absolute occupancy-tenant shall be fixed by the Settlement-officer at each settlement of the area in which the holding is comprised, and the rent so fixed shall not be altered during the currency of the settlement, except under the provisions of section 13, section 14 or section 16.

Rents fixed for period of settlement.

(*2*) The rent payable by any such tenant in respect of his holding *at the commencement of* this Act shall be deemed to have been fixed at the last preceding settlement of the area in which his holding is comprised.

[38.] **40.** (*1*) The right of an absolute occupancy-tenant in his holding shall on his death devolve as if it were land, and shall be transferable subject to the conditions contained in this section.

Right heritable and transferable after notice to landlord, who may claim to purchase.

(*2*) If an absolute occupancy-tenant intends to transfer any right in his holding by sale or gift, or by mortgaging the same for a sum which, together with the interest payable thereon during the five years immediately succeeding the mortgage and the previous sums (if any) secured by mortgage of it, would exceed eight times the annual rent of the holding, or by sub-letting the same in consideration of a fine or premium exceeding five times that rent, he shall give to his landlord a written notice of his intention, and shall defer proceeding with the transfer for a period of one month from the date on which the notice is given.

(*3*) If the intended transfer is by sale or gift, the landlord may, within the said period of one month—

(*a*) claim to purchase the absolute occupancy-right at such value as a Revenue-officer may, on application made to him in this behalf, fix; or

(*b*) permit the sale or gift, in which case he shall be entitled to a sum equal to the rent for one year, and that sum shall be a first charge on the holding.

(*4*) If the intended transfer is by mortgage or sub-lease, the landlord may, within the said period of one month, claim to purchase the absolute occupancy-right at such value as a Revenue-officer may, on application made to him in this behalf, fix.

(*5*) When the right of an absolute occupancy-tenant in his holding is sold or is foreclosed by order of a Civil Court in execution of a decree other than a decree obtained by his landlord, the landlord shall have the same right of pre-emption as is given in the case of a sale by *clause* (*a*) *of* sub-section (*3*).

(*6*) When an application is made to a Revenue-officer under this section to fix the value of an absolute occupancy-right which is already mortgaged, he shall fix the value of the right as if it were not mortgaged; and, if the landlord purchases the right, the mortgage-debt shall be a charge on the purchase-money in exoneration of the land.

(*7*) Any transfer made in contravention of this section shall be void as against the landlord.

[39.] **41.** Notwithstanding any contract to the contrary, or any provision of a record-of-rights, an absolute occupancy-tenant shall not be ejected from his holding by his landlord as such for any cause.

Absolute occupancy-tenant not liable to ejectment.

[40.] **42.** The rent of the holding of an absolute occupancy-tenant shall be *the* first charge on that holding, *which shall, subject to the other provisions of this Act, be liable to sale in execution of a decree for arrears of the rent thereof.*

Rent first charge on holding and holding saleable in execution of decree for arrears of rent.

CHAPTER IV.

OF OCCUPANCY-TENANTS.

[41.] **43.** Every tenant who, *at the commencement of* this Act, has held the same land continuously for twelve years, otherwise than as an absolute occupancy-tenant or a sub-tenant, and every person who is, *at the commencement of* this Act, or thereafter becomes, a tenant (not being an absolute occupancy-tenant or a sub-tenant) of land in the districts of Chánda, Nimár and Sambalpúr, shall be deemed to be an occupancy-tenant of that land:

Definition of "occupancy-tenant."

Provided that the land is not—

(*a*) sír-land, or

(*b*) held in lieu of wages, or

(*c*) held, in any district other than Sambalpúr, under a written lease in which it is expressly agreed that a right of occupancy in the land shall not be acquired, or that the tenant shall quit the land at the termination of the lease.

Explanation I.—The occupation of any person from whom the tenant inherited his holding, is, for the purposes of this section, deemed to be the occupation of the tenant.

Explanation II.—Where, by the custom of any village, the holdings of tenants are, or have been, liable to periodical re-distribution, land which a

tenant or any person under whom he claims has, in accordance with that custom, from time to time, received in exchange for land previously held by him, is, for the purpose of calculating, under this section, the period of twelve years, deemed to be the same land as the land which he held before the exchange.

[42.] **44.** (*1*) *Whoever, after the commencement of this Act, temporarily or permanently loses, or parts with, his proprietary rights in land including sír-land (other than bhogra), shall, at the date of such loss or parting, become an occupancy-tenant of that sír-land, and the rent payable by him as such shall be fixed by a Revenue-officer on application made by him or by his landlord:*

Cases in which ex-proprietors become occupancy-tenants of their sír-land.

Provided that the Local Government may, in its discretion, on the application of the parties to the transfer, declare any proprietor who is desirous of selling the cultivating as well as the proprietary rights in his sír-land, to be exempt from the provisions of this section in respect of all or any part of his sír-land, if it is shown to the satisfaction of the Local Government—

(*a*) *that the transferor does not belong to an agricultural class, or*

(*b*) *that the transferor, though belonging to an agricultural class, will have other permanent means of subsistence even though parting with the cultivating rights in his sír-land, and that the transferee belongs to an agricultural class; or*

(*d*) *that the area of the sír-land is too large for the transferor to manage after he has parted with his proprietary rights, and that the transferee belongs to an agricultural class.*

(*2*) *Every transfer or surrender of the right to cultivate sír-land, and every agreement for the transfer or surrender by a proprietor of his right to cultivate sír-land, whether such agreement is to be given effect to before or after such right has come into separate existence under sub-section* (*1*), *shall, if such transfer, surrender or agreement is in contravention of the provisions of this section, be void; and no Civil or Revenue Court shall recognize any such transfer, surrender or agreement in any proceeding whatsoever; and, notwithstanding anything contained in the Indian Registration Act,* III of 1877. *1877, no officer empowered to register documents under that Act shall admit to registration any document which purports to transfer or surrender the cultivating rights of a proprietor in his sír-land, or to be an agreement for such transfer or surrender, unless the sanction of the Local Government to such transfer or surrender has been endorsed on the document.*

(*3*) *If there are two or more sharers in any sír-land, and one of them becomes an occupancy-tenant in it under this section, the share which previously belonged to him, shall, on application made by him or by his landlord, be divided off by a Revenue-officer, and the rights of such occupancy-tenant shall be limited to the land comprised in such share.*

Explanation.—If a proprietor parts with his proprietary rights in sír-land by mortgage with possession, he shall be an occupancy-tenant of that sír-land so long as such mortgage continues.

[43.] **45.** (*1*) When an occupancy-tenant dies his right in his holding shall devolve as if it were land:

Devolution and transfer of occupancy-right.

Provided that, except in the districts of Chánda, Nimár and Sambalpúr, a collateral relative of the tenant shall not be entitled to inherit that right, unless at the death of the tenant he was a co-sharer in the holding, *or held land, or was permanently resident, in the village in or from which the holding is cultivated, and is in the male line of descent from an ancestor who occupied the holding.*

(*2*) *The right of an occupancy-tenant in his holding may, subject to the other provisions of this Act, be sold in execution of a decree for arrears of the rent thereof, but shall not be liable to sale in execution of any other decree whatsoever, nor shall any decree be passed for the sale of such right.*

(*3*) *No occupancy-tenant shall be entitled to sell, make a gift of, mortgage, sublet (except from year to year) or otherwise transfer his right in his holding or in any portion thereof, and every such sale, gift, mortgage, sub-lease (other than from year to year) or transfer shall be void, and no Court or Revenue-officer shall recognize it in any proceeding whatsoever:*

Provided that an occupancy-tenant may transfer his right of occupancy to any person who, if he survived the tenant, would inherit the right of occupancy, or to any person in favour of whom as a co-sharer the right of occupancy originally arose, or who has become by succession a co-sharer therein:

Provided, also, that nothing in this section shall affect the right of the Government to sell the right of an occupancy-tenant in his holding for the recovery of an advance made to him under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884, or the right of the purchaser at such sale to succeed to the holding. XIX of 1883. XII of 1884.

(*4*) *No contract for the sublease of a holding or any portion thereof shall be entered into or made during the currency of a sublease of such holding or such portion thereof; and every such contract shall be void; and no Court or Revenue-officer shall recognize it in any proceeding whatsoever.*

(*5*) *Notwithstanding anything contained in the Indian Registration Act, 1877, no officer empowered to register documents shall admit to registration any document which purports to transfer the right of an occupancy-tenant in his holding or in any portion thereof, unless the document recites that the transferee is a person who, if he survived the tenant, would inherit the right of occupancy, or is a person in favour of whom as a co-sharer the right of occupancy originally arose or who became by succession a co-sharer therein.* III of 1877.

46. *If an occupancy-tenant transfers any portion of his right in any land in contravention of the provisions of the last foregoing section, any such person as is referred to in the first proviso to sub-section* (*3*) *of that section, or the landlord from whom the tenant held the land, or, if the transfer is or has become permanent, the tenant, may at any time after the date of such transfer recover by suit from the transferee or his representative in interest, possession of the subject of the transfer:*

Re-entry upon land of occupancy-tenant illegally transferred.

Provided that such suit shall be instituted—

(*1*) *at any time before the transfer has become permanent, or*

(*2*) *after the transfer has become permanent but before the expiration of six years reckoned from the date on which it became permanent, or before the announcement of the assessment of the settlement next following after that date, whichever event is the later.*

Priority as to right to sue under section 46.

47. (*1*) *Among the persons entitled to institute a suit under the last foregoing section, the right so to sue shall accrue in the following order, namely:*

first, to the occupancy-tenant himself, if so entitled;

secondly, to such persons as would under section 45, sub-section (1), inherit the right of occupancy if they survived the tenant, in the order in which they would so inherit the right of occupancy;

thirdly, to co-sharers in the right of occupancy jointly, in proportion to their shares; and,

lastly, to the landlord.

(*2*) *When any such suit as aforesaid is instituted, the Court shall issue a notice to all persons who seem to it, prima facie, to be entitled to a right to sue, and shall, after hearing such of them as appear and any other persons who may apply to be heard in the matter, decide from time to time who from among such of them as desire to exercise the right aforesaid is first entitled to do so, and, if he is not the original plaintiff, on his paying into Court within one month such reasonable sum as it thinks fit to recompense such plaintiff for the expenses incurred by him in connection with the institution of the suit, substitute him for such plaintiff and proceed with the suit as if it had been instituted by him.*

(*4*) *For the purpose of carrying this section into effect, the Court may make all such orders as it thinks fit regarding costs, the ascertainment of the persons entitled to sue, the stay of proceedings and other matters, and an appeal shall lie from the decision in any suit under this section as provided* XIV of 1882. *in the Code of Civil Procedure.*

[44.] Rent of occupancy-tenant to be fixed at settlement.

48. The rent of the holding of every occupancy-tenant shall be fixed by the Settlement-officer at each settlement of the area in which the holding is comprised.

[45.] Fixation of rents during currency of settlement in Chánda, Nimár and Sambalpúr.

49. (*1*) In the districts of Chánda, Nimár and Sambalpúr, the rent fixed under section *48* shall not be altered during the currency of any settlement except under section 13, section 14 or section 16.

(*2*) The rent payable in respect of his holding by a tenant in any of those districts *at the commencement of* this Act shall be deemed to have been fixed at the last preceding settlement of the area in which that holding is comprised.

(*3*) Subject to the provisions of sections 13, 14 and 16, the rent payable by any such tenant in respect of a holding acquired by him after *the commencement of* this Act shall, pending the recurrence of the settlement of the area in which that holding is comprised, be the rent fixed by agreement between him and his landlord at the time he acquires that holding, or, in the absence of any such agreement, or on the expiration of the term for which any such agreement has been made, a rent fixed by a Revenue-officer on the application of either party at the following rate, that is to say:

(*a*) in the districts of Chánda and Nimár, the rate which the *Local Government* has prescribed for occupancy-tenants and caused to be entered in the record-of-rights at the *current* settlement;

(*b*) in the district of Sambalpúr, the average rate at which at the *current* settlement the rents of other lands in the same village of similar quality and possessing similar advantages were fixed.

[46.] Enhancement during settlement in other districts.

50. The rate of rent payable in money by an occupancy-tenant in any other district may, during the currency of a settlement, on the application of the landlord to a Revenue-officer, be enhanced, subject to *any* rules made under *this Act for the local area in which the holding is situate* and for the time being in force:

Provided that—

(*a*) an application under this section shall not be entertained when, *within the ten years immediately preceding the application, the rent of the holding has been fixed at any settlement or* under any *of the other* provisions of this Act, except *those of* section 13 or section 14, *or a suit or application to enhance it has been dismissed on the merits;* and

(*b*) no order shall be made on any such application which is inconsistent with any contract made after the *current* settlement and still in force, *such contract being consistent with this Act.*

Occupancy-tenant not liable to ejectment for arrears of rent, but holding saleable in execution of decree for arrears.

51. *No occupancy-tenant shall be liable to ejectment for arrears of rent, but the rent shall be the first charge on his holding, which shall, subject to the other provisions of this Act, be liable, as provided by section 45, sub-section (2), to sale in execution of a decree for arrears of the rent thereof.*

[48.] Grounds for ejectment.

52. Notwithstanding any contract to the contrary or any provision of a record-of-rights, an occupancy-tenant shall not be ejected from his holding by his landlord as such except* in execution of a decree of a Civil Court passed on the ground of his having diverted the land to non-agricultural purposes or being chargeable with some other act or omission which, by custom not inconsistent with this Act or with any other enactment for the time being in force, renders him liable to be ejected.

* One of the clauses of s. 48 of the present Act is omitted here.

[49.] Tenant changing land in accordance with village-custom.

53. A tenant having a right of occupancy in land situate in a village in which the holdings of tenants are by custom liable to periodical re-distribution, and exchanging that land in accordance with the custom for other land situate in the same village, shall be deemed to have a right of occupancy in the land so taken in exchange.

[50.] Tenant changing land in other cases.

54. If a tenant having a right of occupancy in any land ceases to hold that land, and thereupon commences to hold other land of the same landlord, under circumstances from which it may be inferred that the tenant has accepted that other land in lieu of, and on the same conditions as, the land which he has ceased to hold, he shall, in the absence of a written agreement to the contrary, be deemed to have a right of occupancy in the land which he so commences to hold.

CHAPTER V.

OF VILLAGE-SERVICE TENANTS.

[50A.] **55.** A tenant of a holding who *is* recorded *in the papers of the current* settlement of the area in which the holding is comprised as holding his land rent-free or on favourable terms on condition of rendering village-service is a village-service tenant.

Definition of "village-service tenant."

[50B.] **56.** *(1)* When a village-service tenant dies, his right in his village-service holding shall pass to his successor in office.

Devolution and transfer of village-service tenant's right.

(2) A trahsaction by which a village-service tenant attempts to effect a transfer of *his interest* in his village-service holding by sale, gift, mortgage, sub-lease or otherwise except by a sub-lease from year to year shall be void, and the village-service tenant shall be liable to be ejected for such attempt.

(3) The right of a village-service tenant shall not be sold in execution of a decree.

[50C.] **57.** If a village-service tenant is unable to render the service which he is bound to render, he shall provide a competent person to render it for him.

Obligation of village-service tenant to provide substitute.

[50D.] **58.** *(1)* A village-service tenant shall not be ejected from his holding except in execution of an order for ejectment passed by a Revenue-officer on one of the following grounds, namely:

Grounds on which a village-service tenant may be ejected.

(*a*) that the tenant has attempted to effect a transfer of his holding in contravention of section *56*, sub-section *(2)*;

(*b*) that the tenant has ceased to render the service which he is bound to render, or has failed to render it properly, or, being unable to render it himself, has failed to provide a competent person to render it as required by section *57*;

(*c*) that the tenant has diverted his land to non-agricultural purposes or is chargeable with some other act or omission which, by local custom or the provisions of the village wajib-ul-arz, renders him liable to be dismissed from office;

(*d*) *that the tenant has resigned, or been dismissed from, his office.*

(2) When a village-service tenant is ejected from his holding under this section, or when he dies or resigns or is dismissed from his office, a Revenue-officer may place his successor in office in possession of the holding; and when a village-service tenant is ejected from, or loses possession of, his holding otherwise than in accordance with this section, a Revenue-officer may reinstate him in the possession of his holding and eject any transferee or trespasser who may be in wrongful possession thereof.

CHAPTER VI.

OF SUB-TENANTS.

[51.] **59.** A tenant who is not an absolute occupancy-tenant or an occupancy-tenant and who holds land from another tenant, or from a málik-makbúzá, or from the holder of a survey-number, is a sub-tenant of that land.

Definition of "sub-tenant."

[52.] **60.** A sub-tenant shall, subject to the provisions of sections *6*, 14 and 15, hold on such terms as may be agreed upon between him and his landlord:

Tenure according to agreement.

Provided that, notwithstanding any contract to the contrary, the sub-tenant of an occupancy-tenant or of an ordinary tenant shall be deemed to hold from year to year.

61. *(1) In any local area in which the Local Government may, by notification in the local official Gazette, declare that the provisions of this section are in force, if it is proved to the satisfaction of a Revenue-officer or Settlement-officer that a málik-makbúzá or absolute occupancy-tenant is substantially a non-agriculturist who habitually sublets his holding, such Revenue-officer or Settlement-officer may, with the previous sanction of the Commissioner and in accordance with such rules as the Local Government may prescribe, declare that all persons who are, or may become, the sub-tenants of such holding, possess, as against their landlord, the rights conferred by this Act on an ordinary tenant:*

Power to declare sub-tenants in certain cases to have rights of ordinary tenants.

Provided that—

(a) no such order shall be passed until an opportunity has been given to the málik-makbúzá or absolute occupancy-tenant to show cause against it; and,

(b) notwithstanding anything contained in this Act, the tenure of a sub-tenant who has become, or may become, possessed of the rights of an ordinary tenant under this section, shall be terminable by his landlord after notice given to the sub-tenant through a Revenue-officer not less than six months before the close of the agricultural year, accompanied by a deposit, as compensation for disturbance, of a sum equal to three times the annual rent payable to the landlord by the sub-tenant.

(2) An order passed under sub-section (1) may be withdrawn under the like authority, if the málik-makbúzá or absolute occupancy-tenant proves to the satisfaction of a Revenue-officer or Settlement-officer that, having terminated the tenure of his sub-tenant under proviso (b) to that sub-section, he has established his own cultivation and intends to cultivate his holding himself.

(3) If an absolute occupancy-tenant regarding whose holding a declaration under sub-section (1) is in force, dies without heirs or surrenders his holding, his sub-tenant (if any) shall be deemed to hold direct from the superior landlord at the rent which he was formerly liable to pay to such absolute occupancy-tenant.

CHAPTER VII.

OF ORDINARY TENANTS.

[53.] **62.** *(1)* Every tenant who is not an absolute occupancy-tenant, or an occupancy-tenant, or a village-service tenant or a sub-tenant, is an ordinary tenant.

Definition of "ordinary tenant."

(2) In any local area in which the Local Government *may*, by notification in the *local* official Gazette, declare that *the provisions of* this sub-section *are* in force, where a person cultivates land not being sír-land under an agreement made with the proprietor of the

land and purporting to be an agreement for the cultivation of the land by such person and such proprietor in partnership, such person is an ordinary tenant of the land so cultivated by him, and, notwithstanding any contract to the contrary, the rent payable by him for the land shall be fixed by a Revenue-officer on application made by him or his landlord.

[54A.] **63.** (*1*) A Settlement-officer *shall, unless the Local Government otherwise directs*, determine the rents payable by the ordinary tenants of a mahál, *other than ordinary tenants whose holdings consist entirely of sir-land, and, on and from the date on which the land-revenue assessment takes effect, the landlord shall be entitled to recover only the rents so determined.*

Landlord's right to recover rents determined at settlement as payable by ordinary tenants.

(2) The rents determined under sub-section (*1*) shall be recorded in the proceedings of the Settlement-officer, and a copy of the record shall be granted free of expense to the landlord.

(3) When by reason of the receipt by the landlord of any consideration, whether in money or otherwise, a tenant is holding at a rent lower than that determined by the Settlement-officer under sub-section (1), the Settlement-officer may, notwithstanding anything in this Act, declare him to be entitled to hold at such lower rent,—

(a) if the term is fixed by contract, for the term so fixed or for any shorter period;

(b) in other cases, for such term as the Settlement-officer, having regard to the circumstances, fixes as fair and equitable;

and the term for which the tenant is declared to be so entitled shall be entered in the record made under sub-section (2):

Provided that in no case shall the tenant be entitled to hold at such lower rent for a period longer than that for which the settlement is being made, and, at the expiry of the settlement, he shall not be entitled to a continuance of the privilege.

[56.] **64.** When a landlord wishes to enhance the rent of an ordinary tenant whose holding does not consist entirely of sir-land and whose rent is not fixed by an agreement in writing, and the tenant does not agree to the enhancement, the landlord may cause to be served on the tenant through *a Revenue-officer* a notice of the enhancement not less than six months *or more than twelve months* before the commencement of the agricultural year in which the landlord desires the enhancement to take effect.

Notice of enhancement to be served through *Revenue-officer*.

[57.] **65.** (*1*) If, within the period of one month from the service of a notice under *the last foregoing* section, the tenant on whom the notice has been served, presents to the *Revenue-officer* issuing the notice a statement in writing declaring his willingness to pay the enhanced rent, he shall be deemed to have agreed to pay that rent from the commencement of the agricultural year next following.

Liability of tenant to ejectment in default of his agreeing to enhancement.

(2) If the tenant does not, within the said period of one month, present to the *Revenue-officer* a statement as aforesaid, the landlord may, not less than ten weeks before the commencement of the agricultural year next following, *apply to the Revenue-officer* to eject the tenant.

[58.] **66.** (*1*) If, *when an application has been made under sub-section (2) of the last foregoing section*, the *tenant* appears and agrees to pay the enhanced rent demanded, his agreement shall thereupon be recorded, and he shall not be ejected but shall be liable to pay that rent from the commencement of the agricultural year next following the date of the agreement.

Procedure in ejectment-suit.

(2) If the *tenant fails to* appear, or if, on appearing, he does not agree to pay the enhanced rent demanded, the *Revenue-officer shall determine what rent is fair and equitable for the holding.*

(3) If the tenant agrees to pay the rent so determined, he shall be entitled to remain in occupation of the holding at that rent from the commencement of the current agricultural year.

(4) If the tenant does not agree to pay the rent determined under sub-section (2), the Revenue-officer may make an order for his ejectment on condition that within fifteen days from the date of the order the landlord deposits—

(a) such sum (if any) as may be declared by the order to be payable to the tenant as compensation for improvements; and

(b) a further sum as compensation for disturbance equal to seven times the yearly amount (if any) by which the rent determined under sub-section (2) exceeds the rent previously paid.

[59.] **67.** (*1*) If these sums are so deposited, the *order* shall be made absolute and the sums deposited shall be paid to the tenant.

Conditions on which ejectment order is to be executed.

(2) If these sums are not so deposited, the decree shall become void, and the tenant shall remain in occupation of his holding at the rent previously paid by him.

[54.] **68.** An ordinary tenant shall, subject to the provisions of sections 13, 14, 15, *63 and 66*, pay such rent as may, from time to time, be fixed by agreement between him and his landlord.

Rent of ordinary tenant regulated by agreement.

[60.] [S. 54A (4).] **69.** When *the* rent of a tenant has been *determined* by *a* Settlement-officer *under section 63, or where a tenant has agreed to pay an enhanced rent for his holding under section 65, or when a tenant is holding at a rent determined as fair and equitable under section 66 or section 80, or when a rent has been agreed upon by contract or consent between the landlord and his tenant in respect of any holding, or when an order to eject a tenant from his holding has become void under section 67, no notice of enhancement under section 64 shall be served on such tenant, in respect of such holding, nor shall any further enhancement, by contract or consent or otherwise, in respect of such holding be permissible,* for a period of seven years from the date *on which the settlement made by the Settlement-officer took effect, or from the date of such determination, agreement, contract or consent, or from the date of such order for ejectment becoming void, as the case may be:*

Fresh proceedings not to be taken for seven years.

Provided that, where a tenant is holding land under a special contract with his landlord at a favourable rent for a term of years in consideration of the labour or expense involved in the reclamation by such tenant of the land from waste, nothing in this section shall be construed to prevent a fair

rent being fixed or agreed upon after the expiration of the term of such contract.

[55.] **70.** Notwithstanding any contract to the contrary or any provision of a record-of-rights, an ordinary tenant shall not be ejected from his holding by his landlord as such except—

Grounds on which an ordinary tenant may be ejected.

(*a*) *as provided in the case of an occupancy-tenant by section 52;*

(*b*) *in accordance with the provisions of section 66;*

(*c*) in execution of a decree for ejectment passed on the ground that *his* holding consists entirely of sír-land;

(*d*) as *hereinafter* provided *for arrears of rent.*

[61.] **71.** (*1*) When an ordinary tenant dies, his right in his holding shall devolve as if it were land:

Devolution and transfer of ordinary tenancy

Provided that a collateral relative of the tenant shall not be entitled to inherit his right unless at the death of the tenant he was a co-sharer in the holding.

(*2*) *No decree shall be passed for the sale of the right of an ordinary tenant in his holding, nor shall such right be sold in execution of any decree whatsoever.*

(*3*) *No ordinary tenant shall be entitled to sell, make a gift of, mortgage, sublet (except from year to year) or otherwise transfer his right or holding or any portion thereof; and every such sale, gift, mortgage, sublease (other than from year to year) or transfer shall be void, and no Court or Revenue-officer shall recognize it in any proceeding whatsoever:*

Provided that nothing in this sub-section shall affect the right of the Government to sell the right of an ordinary tenant in his holding for the recovery of an advance made to him under the Land Improve-
XIX of 1883. *ment Loans Act, 1883, or the Agriculturists' Loans*
XII of 1884. *Act, 1884, or the right of the purchaser at such sale to succeed to the holding.*

(*4*) *No contract for the sublease of a holding or any portion thereof shall be entered into or made during the currency of a sublease of such holding or such portion thereof; and every such contract shall be void; and no Court or Revenue-officer shall recognize it in any proceeding whatsoever.*

(*5*) *Notwithstanding anything contained in the*
III of 1877. *Indian Registration Act, 1877, no officer empowered to register documents under that Act shall admit to registration any document which purports to transfer the right of an ordinary tenant in his holding or in any portion thereof.*

72. *If an ordinary tenant transfers any portion of his rights in any land in contravention of the provisions of the last foregoing section, any such person as is referred to in the proviso to sub-section (1) of that section, or the landlord from whom the tenant held the land, or, if the transfer is or has become permanent, the tenant, may at any time after the date of such transfer recover by suit from the transferee or his representative in interest possession of the subject of the transfer:*

Re-entry upon land of ordinary tenant illegally transferred.

Provided that such suit shall be instituted—

(*1*) *at any time before the transfer has become permanent, or*

(*2*) *after the transfer has become permanent but before the expiration of six years reckoned from the date on which it became permanent, or before the announcement of the assessment of the settlement next following after that date, whichever event is later.*

73. (*1*) *Among the persons entitled to institute a suit under the last foregoing section, the right so to sue shall accrue in the following order, namely:*

Priority as to right of recovery of possession under section 72.

first, to the tenant himself, if so entitled;

secondly, to such of the persons entitled to institute a suit under the last foregoing section as would, under section 71, sub-section (1), inherit the right transferred if they survived the tenant, in the order in which they would so inherit such right; and,

lastly, to the landlord.

(*2*) *When any such suit as aforesaid is instituted, the Court shall issue a notice to all persons who seem to it, primâ facie, to be entitled to a right to sue, and shall, after hearing such of them as appear and any other persons who may apply to be heard in the matter, decide from time to time who from among such of them as desire to exercise the right aforesaid is first entitled to do so, and, if he is not the original plaintiff, on his paying into Court within one month such reasonable sum as it thinks fit to recompense such plaintiff for the expenses incurred by him in connection with the institution of the suit, substitute him for such plaintiff and proceed with the suit as if it had been instituted by him.*

(*3*) *For the purpose of carrying this section into effect, the Court may make all such orders as it thinks fit regarding costs, the ascertainment of the persons entitled to sue, the stay of proceedings and other matters, and an appeal shall lie from the decision in every suit under this section as provided in the Code of Civil Procedure.*

XIV of 1882.

[62.] **74.** (*1*) Notwithstanding any contract to the contrary, the landlord of any holding held by an ordinary tenant shall, at the request of the tenant and on the tender by the tenant to him of a sum equal to *two-and-a-half times* the annual rent payable in respect of the holding, together with the cost of preparing any instrument required for this purpose, confer upon the tenant the rights of an occupancy-tenant in respect of the holding; and, when these rights have so been conferred, the rent of the tenant shall be deemed to be fixed under this Act, within the meaning of section 50, at the rate at which rent was payable by the tenant at the date of the request and tender:

Obligation of landlord to confer occupancy-rights on ordinary tenant.

Provided that *the tenant may, for the purposes of any such request and tender,* and the landlord may, upon any such request and tender being made to him, apply to a Revenue-officer, *or during the progress of settlement-operations to a Settlement-officer,* to fix the rent of the holding for the purposes of this section; and, if it is proved to the satisfaction of the officer that the rate of rent payable in respect to the holding is *greater or* less than the rate usually paid by ordinary tenants of holdings situate in the *village or vicinity* for land of similar quality with like advantages, the officer *may* fix the rent at the latter rate, and the rent so fixed shall for the purposes of this section be deemed to be, and to have been at the date of the request and tender, the rent payable by the tenant:

Provided, further, that, if the application is made otherwise than during the progress of settlement-operations, nothing in this section shall be

construed to empower a Revenue-officer to alter a rent within seven years of its having been fixed under any of the provisions of this Act, except on the ground that some such change as is described in section 14 has since occurred so as to render the rent so fixed no longer a fair rent.

(2) If a landlord to whom a request and tender are made by a tenant under sub-section (1), refuses or neglects for a period of one month to confer the rights of an occupancy-tenant on the tenant, the tenant may deposit the sum aforesaid in the Court of a Revenue-officer, *or, during the progress of settlement-operations, of a Settlement-officer*, and apply to that officer to confer upon him the rights of an occupancy-tenant in respect of the holding.

(3) The officer *so applied to*, after giving notice of the application to the landlord and hearing him, if he appears, and *after* making such inquiry as he thinks necessary, may execute any instrument required for conferring the rights *of an occupancy-tenant in respect of the holding* upon the tenant, and the execution shall have the same effect as an execution by the landlord.

(4) *Every* person upon whom the rights of an occupancy-tenant are conferred under this section, shall be deemed to be an occupancy-tenant for the purposes of this Act.

(5) Nothing in this section shall apply to a holding consisting entirely of sir-land.

CHAPTER VIII.

JURISDICTION AND PROCEDURE.

Power to order progressive enhancement.

75. *If a Revenue-officer or Settlement-officer, as the case may be, in any proceeding under this Act passes an order which enhances a tenant's rent, but considers that the immediate enforcement of such order to its full extent will be attended by hardship to the tenant, he may direct that the enhancement shall be gradual, that is to say, that the rent shall increase by annual increments for any number of years, not exceeding five, until the full enhancement ordered has been reached.*

[66.] **76.** The *Local Government* may direct that all suits or any specified class of suits, between landlords and tenants as such, shall not be registered in the registers of civil suits kept under the Code of Civil Procedure but in such other registers as he may prescribe.

Power to direct that suits between landlords and tenants be entered in separate register.

XIV of 1882.

[67.] **77.** (1) In suits between landlords and tenants as such, the plaint shall, in addition to the matters mentioned in section 50 of the Code of Civil Procedure, specify the area of the land to which the suit relates, and, where the fields comprised in that land have been numbered in a Government survey, the number of each such field; and, in the case of suits for an arrear, the amount of the yearly rent and the instalments in which it is payable.

Plaint in such suits.

XIV of 1882.

(2) When the land to which the suit relates comprises parts of numbered fields, or has not been divided into numbered fields, an accurate and sufficient description of the land and its boundaries shall be given in the plaint.

[68.] **78.** In suits between landlords and tenants as such, the fees of a legal practitioner shall not be allowed as costs, unless the Court considers, for reasons to be recorded by it in writing, that those fees ought to be allowed.

Legal practitioners' fees not allowed, unless for special reasons.

79. No set-off shall be allowed in any suit for arrears unless the amount claimed as a set-off has been determined by a decree or order of a competent Court or of a Revenue-officer or Settlement-officer. [69.]

Set-off when allowed in suits for arrears.

80. (1) *If in any suit in which the defendant is an ordinary tenant whose holding does not consist entirely of sir-land, the tenant appears and, at any time before a decree is passed, pleads that his rent is excessive, the Court shall inquire into the circumstances of the rent.*

Procedure when ordinary tenant in suit pleads excessive rent.

(2) *If the Court finds that the rent payable by the tenant has been enhanced by contract or consent above the rent determined by a Settlement-officer at the current settlement or by a Revenue-officer under this Act, or, when not so determined, above the rent at which the holding was first taken up by the tenant, or, if the rent payable was determined by a Settlement-officer only after the landlord had refused to comply with the request of the Settlement-officer to reduce it, the Court may stay proceedings and refer the case to a Revenue-officer, who shall thereupon determine what rent is fair and equitable for the holding. If the rent so determined is less than the rent previously payable, the Court shall decree against the tenant arrears of rent on account of any year only to the extent of the amount (if any) by which his payments for that year fell short of the rent so determined.*

(3) *If the Court finds that the rent in respect of which the plea is made by the tenant, was not enhanced or determined in the manner described in sub-section (2), but was the rent at which the tenant first took up the holding from the landlord, the Court shall pass a decree for such sum as may be due at the rent so payable, but may, before or after passing the decree, refer the case to a Revenue-officer, who shall thereupon determine what is a fair and equitable rent for the holding, and, if the tenant pays the amount decreed within the time allowed by this Act, he shall be entitled to remain in occupation of his holding at the rent so determined with effect from the commencement of the agricultural year next following the date of the institution of the suit.*

Explanation I.—Nothing in this section shall be construed to authorize a Revenue-officer to determine a rent higher than that payable by the tenant at the date of the institution of the suit.

Explanation II.—A statement made during the progress of settlement-operations by the Settlement-officer, and contained in any return or report prescribed by the Local Government, to the effect that a landlord refused to reduce any rent, shall be conclusive proof of such refusal.

Tenants' improvements how to be treated in fixing rents.

81. *When the land in respect of which an application is made under section 49 or section 59, or for which a fair rent is to be determined under section 67 or section 80, has been improved, in accordance with the provisions of this Act, by the agency, or at the expense, of the tenant and the value of such improvement was not taken into consideration by the Settlement-officer in determining the rent of the holding at the settlement current at the time of the application, the quality and advantages of the land shall, notwithstanding anything contained in any contract or record-of-rights to the contrary, be deemed, for the purposes of any such section as aforesaid, to be the quality*

and advantages which the land would have had and enjoyed, if the improvement had not been made.

[70.] **82.** In suits for arrears, interest on the arrears may be allowed up to the date of institution, at such rate, not exceeding twelve per cent. per annum, as the Court thinks fit.

Interest on arrears.

[71.] **83.** A decree or order passed in a suit for arrears, whether on appeal or otherwise, by a Judge of a Civil Court exercising powers not less than those of an Assistant Commissioner of the first class, as defined in the Central Provinces Civil Courts Act, 1885, shall not be subject to appeal, unless—

No appeal in certain suits for arrears.

XVI of 1885.

(*a*) the amount or value of the subject-matter of the suit exceeds one hundred rupees; or

(*b*) *the decree has decided a question relating to title to land or to some interest in land as between parties having conflicting claims thereto, or a question of right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant.*

[72.] **84.** (*1*) If a decree for an arrear is passed against a tenant and remains unsatisfied, the landlord may, at any time before the execution of the decree is barred by limitation *and not less than six months before the expiration of the current agricultural year*, apply to the Court having authority to execute the decree, *if the tenant is an occupancy-tenant or an absolute occupancy tenant, to attach the holding in respect of which the arrear is due, and, if the tenant is an ordinary tenant*, to cause a notice to be served on *him*, directing him either to pay the amount due under the decree not later than the expiration of the *current* agricultural year, or to surrender his holding not later than that time.

Ejectment for non-payment of an arrear due under a decree.

(*2*) *If the holding of an occupancy-tenant or an absolute occupancy-tenant is attached under sub-section* (*1*) *and the amount due is not paid by the tenant within three months from the date of such attachment, the Court shall order the sale of the holding attached and shall transfer the proceedings to a Revenue-officer for execution of the sale in accordance with such rules as may be prescribed by the Local Government in this behalf:*

Provided that no sale shall be confirmed under such rules before the expiration of the current agricultural year.

(*3*) *If the amount due under the decree is paid before the expiration of the current agricultural year, or if the sale is not confirmed before such expiration, then, if such amount is paid at any time before the sale is confirmed, the Court shall release the holding from attachment.*

(*4*) *If the tenant is an ordinary tenant and a notice under sub-section* (*1*) *is served on him not less than four months before the expiration of the current agricultural year, and if the amount due is not paid and the holding is not surrendered before such expiration, the Court may, in its discretion but subject to the other provisions of this Act, make an order for the ejectment of the tenant from his holding.*

[73.] **85.** (*1*) Where, in answer to a suit for an arrear, the tenant admits that the arrear is due, but pleads that the produce of his holding during the period in respect of which the arrear is claimed has been diminished or destroyed by drought, hail or other extraordinary calamity beyond his control, the Court in its discretion may, notwithstanding any contract to the contrary, allow in its decree any deduction from the arrear, and direct payment of the amount decreed (if any) in such instalments (if any) as it thinks fit.

Power of Court to deal with cases of drought or other calamity in suits for arrears.

(*2*) In any such case the Court may order that the provisions of *the last foregoing* section shall not apply to the decree.

(*3*) In making a decree under this section the Court shall have regard to—

(*a*) the value of the produce of the holding for the whole agricultural year in respect of which the arrear accrued; and

(*b*) the proportion which the amount of rent payable for that year by the tenant bears to that value.

(*4*) If in any such suit it appears that the land-revenue of the village in which the holding is situate has been, *wholly or in part*, suspended or remitted on account of drought, hail or other extraordinary calamity in respect of the period for which the arrear is claimed, the Court shall presume, until the contrary is shown, that the diminution or destruction alleged by the tenant has taken place.

[74.] **86.** (*1*) A suit for the ejectment of a tenant on the ground that he has done or omitted to do something for doing or omitting to do which he is liable to ejectment, or that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord, liable to ejectment, shall not be entertained unless the landlord has requested the tenant, where the damage or breach is capable of remedy, to remedy the same, and, in any case, to pay reasonable compensation for the damage or breach, and the tenant has failed to comply within a reasonable time with that request.

Relief against forfeitures.

(*2*) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonably be payable to the plaintiff for the damage or breach, and whether, in the opinion of the Court, the damage or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the damage or breach is declared to be capable of remedy, to remedy the same.

(*3*) The Court may, from time to time, extend a period fixed by it under sub-section (*2*) for remedying a damage or breach.

(*4*) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the damage or breach is declared by the Court to be capable of remedy, remedies the damage or breach to the satisfaction of the Court, the decree shall not be executed.

[75.] **87.** The following rules shall be applicable in the case of every tenant ejected from a holding:

Rights of ejected tenant in respect of crops and land prepared for sowing.

(*1*) When the tenant has, before the date of his ejectment, sown or planted crops in any land

comprised in the holding, he shall be entitled, at the option of the landlord, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the estimated value of the labour and capital expended by the tenant in preparing the land and sowing, planting and tending the crops, together with reasonable interest thereon.

(2) When the tenant has, before the date of his ejectment, prepared for sowing any land comprised in his holding, but has not sown or planted crops on that land, he shall be entitled to receive from the landlord the estimated value of the labour and capital expended by him in so preparing the land, together with reasonable interest thereon:

Provided that a tenant shall not be entitled to retain possession of any land or receive any sum in respect thereof under this section when, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage.

[76.] **88.** When a landlord elects, under clause (*1*) *of the last foregoing section*, to allow a tenant to retain possession of any land for the purpose specified in that clause, the tenant shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court may deem reasonable.

Payment by tenant for occupation of land under section 87.

[77.] **89.** In all suits and proceedings for ejectment *or for sale for arrears of rent*, the Court shall inquire into and determine all claims under this Act by the landlord against the tenant as such, or by the tenant against the landlord as such.

All claims between landlord and tenant to be determined in ejectment or *sale* proceedings.

[78.] **90.** (*1*) When it appears to a Court making an enquiry under *the last foregoing* section that the amount payable by the landlord to the tenant as such exceeds the amount payable by the tenant to the landlord as such, *the proceedings for sale, or for ejectment, if under section 84, shall abate, and, in other cases*, the decree or order for ejectment (if any) shall, unless the landlord and tenant come to an arrangement regarding the payment of the excess sum, specify a time within which it must be paid into Court.

Procedure when, on ejectment, money is due by the landlord to the tenant.

(2) If it is so paid within the time specified, the Court shall, *subject to the other provisions of this Act*, eject the tenant; and, if it is not so paid, the Court shall refuse to eject the tenant.

[79.] **91.** All decrees and orders for ejectment under this Act shall take effect from the beginning of the agricultural year next following the date of the decree or order, *except where such decree or order is passed within the first month of the agricultural year, when, subject to the provisions of sections 87 and 88, it shall take effect at once.*

Ejectment-decrees and orders to have effect from beginning of agricultural year.

92. *Any tenant who has been ejected from his holding or from any portion thereof otherwise than in accordance with the provisions of this Act, may, on application to a Revenue-officer made within one year from the date of his ejectment, be reinstated in possession of such holding or portion:*

Reinstatement of tenant illegally ejected.

Provided that no order passed under this section shall prejudice the right of the landlord to eject the tenant so reinstated, or the right of a tenant whose application for reinstatement is rejected, to recover possession of his holding by means of a regular suit instituted in accordance with the provisions of this Act.

[80.] **93.** (*1*) If any landlord or tenant of a holding desires that the extent of that holding be ascertained, or that evidence relating to any improvement made in respect thereof, or to the state of the holding at any specified time, be recorded, he may apply to a Revenue-officer; and that officer shall thereupon, in presence of the parties,—

Applications to measure or ascertain condition of holdings.

(*a*) make or cause to be made such inquiry as he thinks fit, with a view to ascertaining the extent of the holding, and record his finding thereon, or

(*b*) (where the applicant seeks to have evidence recorded) record that evidence:

Provided that no action shall be taken by any Revenue-officer under this section if he considers that there are no reasonable grounds for making the application, or if the subject-matter thereof is under inquiry in a Civil Court.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in any subsequent proceedings between the landlord and tenant or any persons claiming under them.

[81.] **94.** (*1*) The period of limitation for a suit instituted by a tenant other than an absolute occupancy-tenant to recover possession of land from which he has been ejected, shall be two years from the date on which he is ejected.

Limitation in suits under the Act.

(2) *Whenever rent is taken by division of the produce or by estimate or appraisement of the crop, and no application is made under section 18, no suit by the landlord for the recovery of the share of the produce claimed by him as rent, or the value thereof, shall lie unless such suit is instituted within a period of three months reckoned from the date on which the rent instalment on account of the harvest to which the crop belongs fell due.*

(3) In *all* other *cases, and subject to the provisions of sections 46 and 72*, the limitation of every suit *brought under this Act* shall be governed by the Indian Limitation Act, 1877: XV of 1877.

Provided that nothing in sections 7, 8 and 9 of the said Act shall apply to suits for arrears of rent or for the ejectment of a tenant, or to suits for recovery of possession by a tenant against his landlord.

[83.] **95.** No Court other than the Court of a Revenue-officer or Settlement-officer shall fix any rent or call in question any rent fixed by a Revenue-officer or Settlement-officer, or shall take cognizance of any dispute or matter in which any of the following applications might be made, namely:

Jurisdiction of Civil Courts barred in certain cases.

(*a*) applications for permission to deposit rent in Court (section 8);

(*b*) applications to enhance rent on account of improvements made by, or at the expense of, the landlord (section 13);

(*c*) applications to alter the rent of a holding on account of increase or diminution or deterioration of the holding, or of a new

assessment of revenue (sections 14 and 15);

(*d*) applications for the commutation of rents paid in kind (section 16);

(*e*) applications for a commission to divide, estimate or appraise a crop (section 18);

(*f*) applications to fix the price at which a landlord may purchase in case of an intended transfer (section 40);

(*g*) applications for an order to eject a village-service tenant, *or to reinstate him in possession of his holding* (section 58);

(*h*) applications to fix rent or confer occupancy-rights (section 74);

(*i*) applications to measure, or ascertain the condition of, holdings (section 93); and

(*j*) applications relating to such other matters as Revenue-officers or Settlement-officers are empowered to deal with under this Act or the rules made under this Act.

[64.] Procedure on applications to Revenue and Settlement-officers, and appeals from their orders.

96. (*1*) In fixing rents and disposing of the matters referred to in *the last foregoing* section Revenue-officers and Settlement-officers shall, as nearly as may be practicable, subject to the provisions of this Act, exercise the same powers and follow the same procedure as they exercise and follow under the Central Provinces Land-revenue Act, 1881.

XVIII of 1881.

(*2*) From every decision or order of a Revenue-officer or Settlement-officer fixing rent or disposing of any matter referred to in *the last foregoing* section, an appeal shall lie as if that decision or order had been passed by that officer under the said Act.

[65.] Jurisdiction of Civil Courts in suits between landlords and tenants.

97. Except as provided in section 95, the Civil Courts shall have jurisdiction in all suits between landlords and tenants as such *and in all suits for the recovery of possession under section 46 or section 72*:

Provided that—

(*a*) a Judge of a Civil Court of original jurisdiction shall not, unless he is also a Revenue-officer or Settlement-officer, hear any such suit; and

(*b*) the *Local Government* may, subject to the *other* provisions of this Act, direct that all or any class of such suits shall be heard and determined only in such Courts competent to try the same as *it* thinks fit, and not otherwise.

Restrictions on exclusion of Act by contract.

98. *No tenant shall, after the commencement of this Act, be capable by contract of destroying, modifying or limiting any right which has accrued, or which may accrue to him in accordance with the provisions of this Act, nor shall any landlord be capable by contract of destroying, modifying or limiting any obligation under which he may lie by virtue of any of the said provisions.*

CHAPTER IX.

SUPPLEMENTAL.

[82.] Power to Local Government to make rules.

99. The *Local Government* may, by notification in the *local* official Gazette, make rules—

(*a*) for the guidance of Revenue-officers and Settlement-officers in fixing, altering and commuting rents *in any local area*; and

(*b*) for the guidance of all other persons in *other* matters connected with the enforcement of this Act.

[*Cf.* 2.] Repeals.

100. *The enactments mentioned in the schedule are repealed to the extent specified in the fourth column thereof.*

THE SCHEDULE.

ENACTMENTS REPEALED.

(*See section 100.*)

1	2	3	4
Year.	*No.*	*Short title.*	*Extent of repeal.*
1883	*IX*	*The Central Provinces Tenancy Act, 1883.*	*The whole.*
1889	*XVII*	*The Central Provinces Tenancy Act, 1889.*	*The whole.*
1891	*XII*	*The Repealing and Amending Act, 1891.*	*So much as relates to Acts IX of 1883 and XVII of 1889.*

STATEMENT OF OBJECTS AND REASONS.

Experience of the working of the Central Provinces Tenancy Act, 1883, gained since its amendment by Act XVII of 1889, has shown the necessity for its further amendment in some matters of importance. The reasons for the changes which are now proposed are explained below, and the amendments have the almost unanimous support of the officers consulted. As those changes are numerous, it is proposed to repeal the Acts of 1883 and 1889 and to pass a Bill to consolidate and amend the law on the subject.

2. The twelve-year rule, under which a tenant acquired a right-of-occupancy in land which he had held continuously for twelve years, was abrogated in 1883 in favour of a measure which protected all tenants except sub-tenants. The principal features of this enactment were the right of the ordinary tenant to hold his land so long as the rent was paid, the prohibition of frequent enhancements of rent, and the right to the payment of compensation in case of disturbance. These safeguards, which were novel and experimental, have not completely answered their purpose, at least in the more advanced parts of the province. The present law has failed in those tracts in which the competition for land is keenest, in respect of the method by which the rent of the ordinary tenant is settled; and, with the increase of population, a similar result may be expected in the parts that are at present less advanced. It is, therefore, proposed, not to alter the principle of the present law, but to amend it by an extension of the principle on which it is already based, so as to provide that the rent of every tenant shall be fixed at settlement for a term of seven

years, whether the Settlement-officer raises, lowers or maintains it, and that after the expiry of this period, should the landlord propose to enhance it, the tenant shall have a right of reference to the Revenue-officer, who will then proceed to fix a fair rent at which the tenant will be entitled to hold. The amendments necessary to give effect to this proposal are contained in clauses 60, 66 and 80 of the Bill.

3. This proposal has been further extended so as to provide that the fairness of the rent may be adjudicated upon when the tenant proposes to purchase the occupancy-right of his holding (clause 74); that there shall be power to make enhancements of rents progressive (clause 75); and that in a suit for the recovery of arrears of rent, which may lead to ejectment, the Court shall inquire into the circumstances of the rent, if it is pleaded that it is excessive, and shall, subject to certain limitations, refer the case to a Revenue-officer who shall determine a fair and equitable rent (clause 80).

4. It is also proposed to withdraw from occupancy and ordinary tenants the powers of transfer which they at present enjoy with the consent of their landlord, leaving untouched the power which occupancy-tenants possess of transferring holdings to heirs or co-sharers independently of that consent. Powers of transfer were conferred upon tenants of both classes, practically for the first time by the legislation of 1883. They have scarcely yet learned the powers with which they were then endowed. Transfers have, up to the present, been few, but there is abundant evidence in the extent to which the holdings of absolute occupancy-tenants have been transferred, that, once tenants of the lower classes fairly learn that they have rights of transfer, similar results will follow in their holdings also. The design of the Act of 1883 was to encourage the application of capital to the soil, but there is a complete consensus of opinion that these anticipations have not been fulfilled, and that, in the interests of the preservation of their holdings to the tenants, it is necessary to retrace our steps. This can fortunately still be done without interference with established customs and prescriptive rights. It is, therefore, proposed to withdraw from occupancy and ordinary tenants all power of transfer to strangers save by way of sub-leasing from year to year (clauses 45 and 71). This will place the occupancy and ordinary tenant in practically the same position as the occupancy-tenant of the neighbouring North-Western Provinces. Transfers in contravention of the law have at the same time been declared to be void: but those interested have been empowered to recover possession of the holding thus transferred (clauses 46 and 72).

5. It is proposed, moreover, to amend the present law regarding the transfer of a proprietor's *sir* rights. A proprietor who alienates his rights of ownership, is under the present Act maintained in the enjoyment of occupancy-rights in his home farm, but only if he has not expressly agreed to the transfer of the rights of cultivation or a Court has not expressly directed such transfer. It is found, as indeed might have been expected, that so long as a debtor is allowed the option of contracting himself out of the protection which the law is intended to afford him, the same pressure of circumstances which forces him to pledge or sell his land, also forces him to relinquish the protection. It is proposed, therefore, to adopt, with certain modifications and limitations, the law on this subject already obtaining in the North-Western Provinces, which refuses to the owner the option of parting with the occupancy of his *sir-land*, even by express agreement. Power to relax this prohibition is, however, given to the Chief Commissioner under certain specified circumstances (clause 44).

6. The right of inheritance to an occupancy holding has been extended to collaterals who hold land or are permanently resident in the village and are in the male line of descent from an ancester who occupied the holding. It has been ascertained that this is at present the common rule of succession prevailing in the Central Provinces; and, as the subdivision of holdings extends, the present more limited rule would operate, in the event of the failure of one branch of the family, to exclude the other branches from the succession to which, if still joint, they would be entitled (clause 45).

7. It is proposed to substitute the sale of the holding for the ejectment now allowed in the execution of a decree for arrears of rent against an occupancy-tenant. The present procedure allows the landlord to take advantage of the temporary necessities of the tenant in order to deprive him for ever of his holding, while the proposed procedure secures to the tenant the full market value of his rights (clause 51).

The opportunity has also been taken to provide by law for the procedure to be followed in the sale of both absolute occupancy and occupancy tenancies (clause 84).

8. The protection of sub-tenants is a matter which has become of increasing importance with the agricultural development of the Central Provinces. Power is, therefore, taken to secure to them a measure of protection in cases where their landlords, although themselves plotowners or absolute occupancy-tenants, are mere non-cultivating rent receivers, so that the sub-tenants are themselves the primary cultivators and consequently deserving of the protection extended to tenants proper holding directly under the owner of the land (clause 61).

9. It has been found that the cost and uncertainty of legal proceedings often prevent a tenant from seeking redress for wrong suffered at the hands of his landlord. Power has, therefore, been given to Revenue-officers to summarily reinstate tenants who have been ejected otherwise than by legal process (clause 92). If the tenant is found to have been

wrongfully ejected the burden of an appeal to the Courts will then lie upon the *primâ facie* wrongdoer.

10. Further amendments are, that the suspension or remission of the land-revenue due to the Government carries with it the suspension or remission of a corresponding proportion of the rent (clause 17); that a village-service tenant who vacates his office, also vacates his holding, while, if he is wrongfully ejected from it, a Revenue-officer may reinstate him (clause 58); that a second appeal is allowed in rent-suits when certain questions of importance are involved (clause 83 (*b*)); and that a suit for rent paid by division or appraisement of the produce must be brought within three months of the date fixed for the rent instalment (clause 94 (2)). This last provision is justified by the impossibility of procuring after any lengthened interval satisfactory evidence as to the produce of a field, and by the fact that, in case of dispute, either landlord or tenant may apply to a Revenue-officer, who will divide or appraise the crop for him.

11. The remaining amendments proposed are generally unimportant and call for no separate explanation.

The 30th September, 1897.

J. WOODBURN.

J. M. MACPHERSON,
Secretary to the Government of India.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 1st October, 1897:

NO. 15 OF 1897.

A Bill to further amend the Central Provinces Land-revenue Act, 1881.

WHEREAS it is expedient further to amend the Central Provinces Land-revenue Act, 1881; It is hereby enacted as follows: VIII of 1881.

1. (*1*) This Act may be called the Central Provinces Land-revenue Act (1881) Amendment Act, 1898; and

Short title and commencement.

(*2*) It shall come into force at once.

2. In Chapter I of the Central Provinces Land-revenue Act, 1881 (hereinafter referred to as "the said Act"), clause (6) of section 4 is repealed, and after section 4 the following shall be substituted, namely: VIII of 1881.

Substitution of new definition of "sír-land" for that contained in section 4, clause (6), Act XVIII, 1881.

'4A. (*1*) The expression "sír-land" means generally the demesne or permanent home-farm land of a proprietor, and includes the following, and no other, land, namely:

Meaning of "sír-land."

(*a*) land which has, under section 69, been finally recorded as "sír-land" in the papers of the current settlement of the local area in which the land is situate;

(*b*) land which *has*, under section 132, clause (*j*), *been declared to be* "sír-land"; and

(*c*) land in the Sambalpúr district which has been recorded as "bhogra" in the papers of the current settlement of the local area in which the land is situate.

(2) In any local area of which no settlement has been made since the commencement of the Central Provinces Land-revenue Act, 1889, until the next following settlement of such local area, "sír-land" also includes land which, at the commencement of the said Act, was occupied by, and had been cultivated by the proprietor or one of the proprietors thereof for a period of not less than twelve consecutive years: XVI of 1889.

Provided that land (other than bhogra) which, at the commencement of the said Act, was unoccupied by such proprietor, and which had, after the date of the last settlement made before the commencement of that Act, or after the expiration of such period of twelve years, been so unoccupied for a period of six consecutive years, shall not be deemed to be "sír-land."

(3) In any local area of which no settlement has been made since the commencement of this Act, until the next following settlement of such local area, "sír-land" also includes land which had, at the commencement of the said Act, been broken up from waste by the proprietor or one of the proprietors thereof, and cultivated by him for a period of not less than six consecutive years:

Provided that, if such period of six years had been completed before the commencement of the Central Provinces Land-revenue Act, 1889, and such land was at the commencement of that Act unoccupied by the proprietor, and had been so unoccupied by him for six consecutive years, it shall not be deemed to be "sír-land."

Explanation I.—For the purposes of sub-sections (2) and (3), land shall be deemed to be occupied by the proprietor when it is leased out by him with an express reservation of his sír-rights, and land shall be deemed to be cultivated when it is allowed to lie fallow in accordance with the usual practice of cultivation.

Explanation II.—In this definition the word "proprietor" *shall be deemed to include* an assignee of proprietary rights, *but not a málik-makbúzá.*

Explanation III.—When by any local custom land is liable to exchange or redistribution among the cultivators thereof, land which is not "sír-land" and which is taken in exchange for "sír-land," becomes "sír land", and the "sír land" given in exchange for that land ceases to be "sír-land."

Explanation IV.—Land which has been recorded as "sír-land" in the papers of any settlement made before the commencement of this Act, shall be deemed to have been finally recorded as "sír-land" under section 69.'

3. After clause (14) of section 4 of the said Act, the following shall be added, namely:

Addition of new clause after clause (14), section 4, Act XVIII, 1881.

'(14-a) "land-revenue" includes all revenue, assessed on land under this Act and also the fees, royalties or other monies leviable from time to time on account of fisheries, mines, quarries, land or water, and the natural products of land or water, whether the property of the Government or not and for whatever purpose used.

5 *f*

4. To clause (15) of section 4 of the said Act the following shall be added namely:

Amendment of section 4, clause (15), Act XVIII, 1881.

"*and in section 65-A it includes also the sum payable by a thikádár, farmer or gaontia to the proprietor for the use or occupation of a village or part of a village farmed by him.*"

5. For section 65-A of the said Act, the following shall be substituted, namely:

Substitution of new section for section 65-A, Act XVIII, 1881.

'65*A*. (*1*) The Settlement-officer may inquire into the claim of any person holding from a proprietor a village or part of a village as thíkádár, gaontia or farmer, and may, *notwithstanding any contract to the contrary and* with the previous sanction of the Chief Commissioner, *declare such thikádár, gaontia or farmer to be "protected" for the purposes of this section:*

Provided that no thikáddr, gaontia or farmer shall be declared to be protected under this section unless he or those from whom he has inherited, was or were in possession of the village, or part of the village, at the current settlement of the local area in which the village is situate, or unless it is proved to the satisfaction of the Settlement-officer that he or those from whom he has inherited, has or have established the village or substantially improved it at his or their own cost:

Provided also that when a thikáddr, farmer or gaontia is entitled to claim protection within the meaning of this section, the Settlement-officer may, in his discretion and with the previous sanction of the Chief Commissioner, instead of declaring him to be protected, confer on him the rights of an occupancy-tenant in respect of the whole or part of any land which he may be cultivating, whether as sir-land or otherwise, at the time of the inquiry, and shall determine the rent payable by him as occupancy-tenant of such land.

(*2*) *When a thikáddr, farmer or gaontia is declared to be protected under this section, the Settlement-officer may, at the request of the proprietor of the village, determine the amount of the rent which shall be payable by such thikáddr, gaontia or farmer to the proprietor of the village on and from the date on which the settlement of the village takes effect.*

(*3*) *Any person who, having held any village or part of a village as a thikáddr, farmer or gaontia, was ejected by the proprietor from, or lost possession otherwise than by transfer or voluntary surrender of, such village or part of a village, and who had at the date of such ejectment or dispossession earned a claim to be protected, may at any time before the expiration of one year from the date of such ejectment or dispossession apply to the Settlement-officer to reinstate him in the possession of the village or part of the village from which he was ejected, and the Settlement-officer may, with the previous sanction of the Chief Commissioner, replace him in the possession of such village or part of a village and declare him to be protected, or may confer upon him the rights of an occupancy-tenant in the whole or part of any land in the village which he was cultivating at the time of his ejectment, and place him in possession of such land and determine the rent which shall be payable by him to the proprietor as such tenant.*

(*4*) *The incidents of the tenure of a thikáddr (including a farmer or gaontia) who has been declared to be protected under this section, shall be as follows:*

(*a*) *the tenure shall be heritable, but not transferable by sale, gift, mortgage or dower; it shall not be saleable in execution of any decree, nor shall any decree be passed for the sale thereof; and, save in so far as any arrangements to the contrary are in force at the time of the declaration, it shall not be partitioned and shall devolve on one member only of the thikáddr's family;*

(*b*) *when on the death of a thikáddr there are two or more heirs bearing the same relationship to him, the eldest of such heirs shall succeed:*

Provided, first, that of such heirs an heir who was joint with the thikáddr, shall have preference over an heir who was separate; and

Provided, secondly, that the eldest of two or more such heirs shall be at liberty at the time of succession to resign his right in favour of another heir bearing the same degree of relationship to the deceased thikáddr as he himself bears:

(*c*) *a protected thikáddr, whether holding under a written lease or a verbal agreement, shall be entitled to a renewal of his lease on its expiry, on his agreeing to farm his village at a fair and equitable rent;*

(*d*) *in the event of any dispute arising between the proprietor and the protected thikáddr as to what is a fair and equitable rent, the matter shall be referred to the Deputy Commissioner, whose decision shall, subject to revision by the Commissioner and Chief Commissioner, be final;*

(*e*) *not more than one enhancement of the rent, or, where it is so specially provided in the terms of the settlement of the village, no enhancement of the rent, shall be imposed on a protected thikáddr during the currency of a settlement;*

(*f*) *all miscellaneous dues and cesses, unless specially authorized by the Chief Commissioner, shall be included in the rent payable under the lease; and*

(*g*) *a protected thikáddr shall comply with the rules made under section 124A for the management of malguzari forests.*

(*5*) *In any proceedings before a Court for the ejectment of a thikáddr, gaontia or farmer, if it appears that the thikáddr, gaontia or farmer has filed an application before a Revenue-officer to obtain a declaration that he is protected, or if he files such an application before the Court, the Court shall stay proceedings until the application has been disposed of in accordance with the provisions of this Act, and shall, if the application is filed before itself, forward such application to the Deputy Commissioner or Settlement-officer for disposal.*

(*6*) *If any protected thikáddr, gaontia or farmer is shown to have since the commencement of the Central Provinces Land-revenue Act, 1898, contravened, or to be contravening, the conditions of his tenure as contained in clause (a) or (g) of sub-section 4, or to have grossly mismanaged the village held by him in lease, the Settlement-officer or Deputy Commissioner may, with the previous sanction of the Chief Commissioner, declare such thikáddr, gaontia or farmer to have forfeited the protection previously conferred on him under this section, and such thikáddr, farmer or gaontia shall from the date of such declaration cease to be protected.*

(*7*) *Nothing in this section shall affect the liability of any protected thikáddr, farmer or gaontia to ejectment in execution of a decree for ejectment passed, in accordance with any law for*

the time being in force and not inconsistent with this Act, on the ground—

(*a*) *that he has failed to pay the rent legally payable by him*;

(*b*) *that he has diverted the culturable land of the village to non-agricultural purposes, or is chargeable with some act or omission which renders him liable to be ejected.*'

6. For section 69 of the said Act, the following shall be substituted, namely:

Substitution of new section for section 69, Act XVIII, 1881.

"69. (*1*) The Settlement-officer shall ascertain and determine the extent of all the land *which is* held as sír-land as defined in section 4A, *and which has not lost its character as sír-land under the provisions of section 42 of the Central Provinces Tenancy Act*, 1898, and shall record the same as sír-land.

Determination and record of sír-land.

(*2*) *The Settlement-officer shall also record as sír-land—*

(*a*) *land which is at the time of his inquiry cultivated by the proprietor or one of the proprietors thereof and has been continuously so cultivated for a period of not less than twelve consecutive years; and*

(*b*) *land which is at the time of his inquiry cultivated by the proprietor, or one of the proprietors thereof, and, having been broken up from waste-land by such proprietor or one of such proprietors, has since been continuously cultivated by him for a period of not less than six years:*

Provided that *no land shall be recorded as sír-land under this sub-section if the total area of sír-land within the mahal already exceeds, or will by such record be made to exceed, one-quarter of the total occupied area of the mahal;*

Provided, further, that the Settlement-officer may, with the previous sanction of the Commissioner, exempt any mahal or part thereof from this limitation in respect of land falling under clause (*b*) *of this sub-section.*

(*3*) When a part of *such* land *as is referred to* in sub-section (2) *is excluded* from the record of sír-land *under the proviso to that sub-section*, the proprietor shall have the right to choose the particular fields which are to be *excluded.*

(*4*) *An order or entry of the Settlement-officer recording, or omitting or refusing to record, any land as sír-land under sub-section* (1) *shall be final unless and until it is reversed or modified by the decree of a Civil Court in a suit instituted under section 83 at any time after the record is attested by the Settlement-officer, or his order regarding the entry is passed, and within one year after the settlement comes into effect; and an order or entry recording, or omitting or refusing to record, any land as sír-land under sub-section* (*2*) *shall be final unless and until it is reversed or modified on appeal or revision in accordance with the provisions of sections 22 to 26.*

(*5*) *The Settlement-officer shall, at the request of any proprietor, furnish him, free of cost, with a list of all the land which has been recorded as sír-land under this section and is situated within the mahal or patti owned wholly or partly by such proprietor.*

(*6*) *All land not falling within the purview of section 4, clause* (*6a*), *shall be presumed, until the contrary is proved, not to be sír-land.*"

7. In section 78 of the said Act, after the figures "69" the word and figure "sub-section (*1*)" shall be inserted.

Amendment of section 78, Act XVIII, 1887.

8. For section 91 of the said Act, the following shall be substituted, namely:

Substitution of new section for section 91, Act XVIII, 1881.

"*When any land-revenue demand is not paid within the time at which it is payable under section 90, such demand shall be deemed to be an "arrear," and all persons from whom it was legally demandable, their representatives and assigns shall thereupon become jointly and severally liable for it, and shall be deemed to be "defaulters" within the meaning of this Act.*"

Definitions of "arrear" and "defaulter."

9. After section 91 of the said Act the following shall be added, namely:

Addition of new section after section 91, Act XVIII, 1881.

"91 A. (*1*) *The land-revenue for the time being assessed on a mahál, holding or survey-number shall, in the case of a mahál or holding, be the first charge upon the rents and profits thereof, and, in the case of a survey-number, upon the produce.*

Land-revenue to be the first charge on rents, profits and produce of land.

(*2*) *Without the previous consent of the Deputy Commissioner or of such officer, not being below the rank of tahsildar, as he may appoint in this behalf, the rents and profits of a mahál or holding and the produce of a survey-number shall not be liable to be taken in execution of a decree or order of any Court until the land-revenue chargeable against such rents, profits or produce, and any arrear due in respect of the máhal, holding or survey-number have been paid.*"

10. To section 94 of the said Act, the following shall be added, namely:

Amendment of section 94, Act XVIII, 1881.

"*and when the land in respect of which the arrear has accrued is already the property of Government, the processes specified in clauses* (*a*), (*b*), (*g*) *and* (*h*) *only shall be enforced.*"

11. In Chapter VIII of the said Act, after section 119 the following shall be added, namely:

Addition of new section after section 119, Act XVIII, 1881.

"*Supplemental.*

191A. *All fees, fines, costs and other charges* (*including any cess for the remuneration of village-officers and patwaris*) *payable under this Act or the rules thereunder, and all monies falling due to the Government under any grant, lease or contract which provides that they shall be so recoverable, may be recovered under this Chapter in the same manner as an arrear.*"

Fees, fines, etc., to be recoverable as arrears of land-revenue.

12. For the last clause (i) of section 132 of the said Act, the following clauses shall be substituted, namely:

XVIII of 1881.

Addition to section 132, Act XVIII, 1881.

"(*i*) inquiring into the claims of thíkádárs, gaontias or farmers, *declaring them to be protected for the purposes of section 65-A, and, generally, carrying out the provision of that section; and*

(*j*) *declaring, either on his own motion or on a reference made by a Court or Revenue-officer, land to be sír-land under the provisions of section 69, sub-section* (*2*), *clause* (*b*), *and the provisos thereto.*"

13. Sections 3, 5, 17, 19, 20 and 24 of the Central Provinces Land-revenue Act, 1889, are repealed.

Repeals.

XVI of 1889.

STATEMENT OF OBJECTS AND REASONS.

In the revision of the Central Provinces Tenancy Act, 1883, it has been proposed to amend the law regarding the transfer of a proprietors' *sír* rights, and to refuse to the owner the option of parting with the occupation of his *sír-land*, even by express agreement. The object of this measure is to preserve to the owner, who has lost his property by improvidence or misfortune, some measure of subsistence. But it is obvious that, if he were allowed to convert the whole of his land into *sír*, he would be practically deprived of his powers of alienation, and the actual cultivators of those rights of occupation, which they possess in lands outside the *sír*. The definition of "*sír-land*" has, therefore, by clause 2 of the annexed Bill to amend the Central Provinces Land-revenue Act, 1881, been somewhat restricted, and, more particularly, rights in *sír*, as distinguished from *khudkasht*, have been limited to one quarter of the total occupied area of the mahál.

2. The working of the law for the protection of thíkádárs has shown that it is desirable to enlarge the provisions of section 65-A of Act XVIII of 1881. The necessity for protection has in many cases been brought to notice only after the thíkádár has been ejected on the expiry of his lease or by the decree of a Civil Court, when, under the law as it stands, interference is impossible. It is inconsistent with the object of the section that its provisions should be liable to be thus set at naught by the action of one of the parties, and it is, therefore, proposed to take power to reinstate ejected thíkádárs who are entitled to protection, at any time within one year from the date of their ejectment. It is also proposed that a Civil Court shall be required to make a reference to a Revenue-officer in every case in which the protected status is claimed by a thíkádár who is the defendant in an action for ejectment. The main incidents of the tenure, which have hitherto only found a place in the terms of settlement, are now to be embodied in the law. It is also proposed to empower the Chief Commissioner to confer upon a thíkádár occupancy-rights in the whole or a portion of the land which he cultivates, instead of protecting him in respect of the whole of his property, and to cancel the protected status when the thíkádár's conduct or management of the property is such as to deprive him of any claim to consideration. These changes are given effect to by clause 5 of the Bill.

3. The definition of "arrear" contained in section 91 of Act XVIII of 1881 does not cover money due to the Government on account of town sites, banks, fisheries, quarries and the like. It is, therefore, proposed, by clauses 3, 8, and 10 of the Bill, to insert a definition of "land-revenue" in section 4 of that Act, to recast section 91 and to amend section 94, so as to render the procedure for the recovery of arrears applicable to these and similar dues.

4. It has recently become the practice for the creditors of a landlord to attach his unpaid rents in the hands of tenants, and so to defeat the lien which the Government possesses upon them. It is, therefore, proposed, to follow the lines of the Punjab and other Land-revenue Acts, and, by clause 9 of the Bill, to insert a new section in Act XVIII of 1881 to declare the Land-revenue a first charge on the rents and profits of land.

The 30th September, 1897.

J. WOODBURN.

J. M. MACPHERSON,
Secretary to the Government of India.

☞ *Continuation sheets of the* Gazette of India, *Part V, dated 16th October 1897, will be published at Calcutta.*

The Gazette of India.

PUBLISHED BY AUTHORITY.

SIMLA, SATURDAY, OCTOBER 16, 1897.

☞ Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V.

Bills introduced in the Council of the Governor General of India for making Laws and Regulations, Reports of Select Committees presented to the Council, and Bills published under Rule 22.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 15th October, 1897:

NO. 16 OF 1897.

THE INDIAN STAMP BILL.

CONTENTS.

The Indian Stamp Bill.

(*Chapter I.—Preliminary.—Sections 1-2.*)

A Bill to Consolidate and amend the law relating to Stamps.

CHAPTER I.

PRELIMINARY.

1(*1*). This Act may be called the Indian Stamp Act, *1898*. [S. 1, Act I of 1879.] Short title, extent and commencement.

(*2*) It extends to the whole of British India *inclusive of Upper Burma, British Baluchistan, the Santal Parganas and the Pargana of Spiti*; and

[Old s. 2, omitted—See Act X of 1897, s. 6, 8 and 24.] (*3*) It shall come into force on the first day of April, *1898*.

2. In this Act, unless there is something repugnant in the subject or context— [S. 3, Act I of 1879.] *Definitions.*

(*1*) "banker" includes a bank and any person acting as a banker: [S. 3 (1), Act I of 1879.]

(*2*) "bill of exchange" includes a hundi, *and any other document entitling or purporting to entitle any person, whether named therein or not, to payment by any other person of, or to draw upon any other person for, any sum of money*; [S. 3(2), Act I of 1879, revised with 54 and 55 Vict., c. 39, s. 32.]

(*3*) "*bill of exchange payable on demand*" *includes*— [54 and 55 Vict., c. 39, s. 32.]

(*a*) *an order for the payment of any sum of money by a bill of exchange or promissory note, or for the delivery of any bill of exchange or promissory note in satisfaction of any sum of money, or for the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen; and*

(*b*) *an order for the payment of any sum of money weekly, monthly, or at any other stated periods, and also an order for the payment by any person at any time after the date thereof, of any sum of money, and sent or delivered by the person making the same to the person by whom the payment is to be made, and not to the person to whom the payment is to be made, or to any person on his behalf.*

(*4*) "bill of lading" *includes a "through bill of lading."* [S. 3(3) Act I of 1879, revised.]

(*5*) "bond" *includes*— [S. 3 (4), Act I of 1879 substituting "includes" for "means."]

(*a*) any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;

(*b*) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and

(*c*) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another:

(*6*) "chargeable" means, as applied to an instrument executed or first executed after *the commencement of* this Act chargeable under this Act, and, as applied to any other instrument chargeable under the law in force in British India when such instrument was executed or, where several persons executed the instrument at different times, first executed: [S. 3 (5), Act I of 1879.]

(*7*) "cheque" means a bill of exchange drawn on a *specified* banker and *not expressed to be* payable *otherwise* than on demand: [S. 3(6), Act I of 1879, revised with S. 6 Act, XXVI of 1881.]

(*8*) "Chief Controlling Revenue-authority" means, [S 3 (7), Act I of 1879.]

(*a*) In the Presidency of Fort St. George and the territories respectively under the administration of the Lieutenant-Governors of Bengal and the North-Western Provinces and the Chief Commissioner of Oudh—the Board of Revenue:

(*b*) in the Presidency of Bombay, outside Sindh and the limits of the town of Bombay—a Revenue Commissioner:

(*c*) in Sindh—the Commissioner:

(*d*) in the Punjab and Burma, *including Upper Burma*—the Financial Commissioner: and

(*e*) elsewhere—the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf: [By name or in virtue of his office—omitted.]

(*9*) "Collector" [S. 3 (8), Act I of 1879.]

(*a*) means, within the limits of the towns of Calcutta, Madras and Bombay, the Collector of Calcutta, Madras and Bombay, respectively, and, without those limits, the Collector of a district, and

(*b*) includes a Deputy Commissioner and any officer whom the Local Government may, by notification in the official Gazette appoint in this behalf: [By name or in virtue of his office—omitted.]

(*10*) "conveyance" means a *conveyance on sale and includes every* instrument by which property (whether moveable or immoveable) is transferred on sale: [S. 3 (9), Act I of 1879.]

(*11*) "duly stamped," as applied to an instrument, means *that the instrument bears an adhesive or impressed stamp of not less than the proper amount and that such stamp has been affixed or used in accordance with the law for the time being in force in British India.* [S. 3(10), Act I of 1879, revised.]

(*12*) "*executed*" *and* "*execution*" *used with reference to instruments mean* "*signed*" *and* "*signature.*" [54 and 55 Vict., c. 39, s. 122(1).]

(*13*) "*Instrument*" *includes every document by which any right or liability is or purports to be created, transferred, limited, extinguished or recorded.* [54 and 55 Vict., c. 39, s. 122.]

(*14*) "instrument of partition" means any instrument whereby co-owners of any property divide or agree to divide such property in severalty, and includes also a final order for effecting a partition passed by any Revenue-authority *or any Civil Court*: [S. 3 (11) Act I of 1879.]

(*15*) "lease" means a lease of immoveable property, and includes also— [S. 3 (12) Act I of 1879.]

(*a*) a pattá;

(*b*) a kabúliyat or other undertaking in writing, not being a counterpart of a lease, to cultivate, occupy, or pay or deliver rent for, immoveable property;

(*c*) any instrument by which tolls of any description are let;

(*d*) *an instrument by which trees are leased for the production of food or drink*; and

(*e*) any writing on an application for a lease intended to signify that the application is granted:

The Indian Stamp Bill.

(*Chapter II.—Stamp-duties.—Sections 3-4.*)

[S. 3 (13), Act I of 1879.] (*16*) "mortgage-deed" includes every instrument whereby, for the purpose of securing money advanced, or to be advanced, by way of loan, or an existing or future debt, or the performance of an engagement, one person transfers, or creates, to or in favour of, another, a right over specified property:

[S. 3 (14), Act I of 1879.] (*17*) "paper" includes vellum, parchment or any other material on which an instrument may be written;

[S. 3 (15), Act I of 1879, revised.] (*18*) "policy of insurance" *includes*—

(*a*) any instrument by which one person, in consideration of a premium, engages to indemnify another against loss, damage or liability arising from an unknown or contingent event;

(*b*) a life-policy, *and any policy insuring any person against accident or sickness, and any other personal insurance*, and

(*c*) any writing evidencing the renewal of, for the purpose of keeping in force, a policy of fire-insurance in respect of which, and of the previous renewal whereof (if any), there has not already been paid the stamp-duty which would have been chargeable if the policy had originally been granted for a longer term than six months;

[S. 3 (15) last 2 paras., Act I of 1879.] (*19*) "policy of sea-insurance," *or "Sea-policy"*

(*a*) means any insurance made upon any ship or vessel, or upon the machinery, tackle or furniture of any ship or vessel, or upon any goods, merchandise or property of any description whatever on board of any ship or vessel, or upon the freight of, or any other interest which may be lawfully insured in or relating to, any ship or vessel, and

(*b*) includes any insurance of goods, merchandise or property for any transit which includes, not only a sea risk, but also any other risk incidental to the transit insured from the commencement of the transit to the ultimate destination covered by the insurance.

Where any person, in consideration of any sum of money paid or to be paid for additional freight or otherwise, agrees to take upon himself any risk attending goods, merchandise or property of any description whatever while on board of any ship or vessel, or engages to indemnify the owner of any such goods, merchandise or property from any risk, loss or damage, such agreement or engagement shall be deemed to be a contract for sea-insurance:

[S. 3 (16), Act I of 1879.] (*20*) "power-of-attorney" *includes* any instrument (not chargeable with a fee under the law relating to court-fees for the time being in force) empowering a specified person to act *for and* in the *name* of the person executing it:

VII of 1870.

[54 and 55 Vict., c. 39, s. 33.] (*21*) "*promissory note*" *includes any document (except a bank note or currency note, bond or debenture) containing a promise to pay any sum of money.*

A note promising the payment of any sum of money out of any particular fund which may or may not be available, or upon any condition or contingency which may or may not be performed or happen, is to be deemed a promissory note for that sum of money.

[Old sub-sections (18), (20), and (21) —omitted— see Act X of 1897, s. 3.]

(*22*) "receipt" *includes* any note, memorandum, or writing—

[S. 3 (17), Act I of 1879 omitting the word "advertisement" in the 2nd line. Cf. 54 and 55 Vict., c. 39, s. 100.]

(*a*) whereby any money, or any bill of exchange, cheque or promissory note is acknowledged to have been received, or

(*b*) whereby any other moveable property is acknowledged to have been received in satisfaction of a debt, or

(*c*) whereby any debt or demand, or any part of a debt or demand, is acknowledged to have been satisfied or discharged, or

(*d*) which signifies or imports any such acknowledgment,

and whether the same is or is not signed with the name of any person: *and*

(*23*) "settlement" means any non-testamentary disposition, in writing, of moveable or immoveable property, made—

[S. 3 (19), Act I of 1879.]

(*a*) in consideration of marriage,

(*b*) for the purpose of distributing property of the settlor among his family or those for whom he desires to provide, or

(*c*) for any religious or charitable purpose:

and includes an agreement in writing to make such a disposition.

CHAPTER II.

STAMP-DUTIES.

A.—Of the Liability of Instruments to Duty.

[S. 5, Act I of 1879.]

Instruments chargeable with duty.

3. Subject to the *provisions of this Act and the* exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in *that* schedule as the proper duty therefor respectively, that is said to say—

(*a*) every instrument mentioned in that schedule, and which, not having been previously executed by any person, is executed in British India on or after the first day of April, *1898*;

(*b*) every bill of exchange, cheque or promissory note drawn or made out of British India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in British India; and

(*c*) every instrument (other than a bill of exchange, cheque or promissory note) mentioned in that schedule, which, not having been previously executed by any person, is executed out of British India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in British India and is received in British India.

Provided that no duty shall be chargeable in respect of any instrument executed by, or on behalf of, or in favour of Government in cases where, but for this exemption, the Government would be liable to pay the duty chargeable in respect of such instrument.

[Old s. 4, omitted as unnecessary—see Act X of 1897, s. 3 (48).]

[General exemption, Sch. II, Act I of 1879.]

Several instruments used in single transactions.

4. (*1*) Where, in the case of any sale, mortgage or settlement, several instruments are employed for completing the transaction, the principal instrument only shall be chargeable with the duty prescribed in Schedule I, for the conveyance, mortgage or settlement,

["Lease" omitted.]

[S. 6, Act I of 1879.]

The Indian Stamp Bill.

(*Chapter II.—Stamp-duties.—Sections 5-11.*)

and each of the other instruments shall be chargeable with a duty of one rupee instead of the duty (if any) prescribed for it in that schedule.

(2) The parties may determine for themselves which of the instruments so employed shall, for the purposes of *sub-section* (1), be deemed to be the principal instrument:

Provided that the duty chargeable on the instrument so determined shall be the highest duty which would be chargeable in respect of any of the said instruments employed.

[S. 7, (para. 5), Act I of 1879.]

Instruments relating to several distinct matters.

5. Any instrument comprising or relating to several distinct matters shall be chargeable with the aggregate amount of the duties with which separate instruments, each comprising or relating to one of such matters, would be chargeable under this Act.

[S. 7, (para. 6), Act I of 1879.]

Instruments coming within several descriptions in schedule I.

6. Subject to the provisions of *the last preceding section*, an instrument so framed as to come within two or more of the descriptions in Schedule I shall, where the duties chargeable thereunder are different, be chargeable only with the highest of such duties:

Provided that nothing *in this Act* contained shall render chargeable with duty exceeding one rupee a counterpart or duplicate of any instrument chargeable with duty and in respect of which the proper duty has been paid.

[S. 7 A, Act I of 1879.]

Policies of sea-insurance.

7. (1) No contract for sea-insurance (other than such insurance as is referred to in section *506* of the Merchant Shipping Act, *1894*), shall be valid unless the same is expressed in a *sea-policy*.

57 & 58 Vict., c. 60.

(2) No *sea*-policy made for time shall be made for any time exceeding twelve months.

(3) No *sea*-policy shall be valid unless it specifies the particular risk or adventure, or the time, for which it is made, the names of the subscribers or underwriters, and the amount or amounts insured.

(4) Where any sea-insurance is made for or upon a voyage and also for time, or to extend to or cover any time beyond thirty days after the ship shall have arrived at her destination and been there moored at anchor, the policy shall be charged with duty as a policy for or upon a voyage, and also with duty as a policy for time.

[S. 7B, Act I of 1879.]

Bonds, debentures or other *securities* issued on loans under Act XI, 1879.

XI of 1879

8. (1) Notwithstanding anything in this Act, any local authority raising a loan under the provisions of the Local Authorities Loan Act, 1879, or of any other law for the time being in force, by the issue of bonds, debentures or other *securities*, shall, in respect of such loan, be chargeable with a duty of eight annas per centum on the total amount of the bonds, debentures or other *securities* issued by it, and such bonds, debentures or other *securities* need not be stamped and shall not be chargeable with any further duty on renewal, consolidation, sub-division or otherwise.

(2) The provisions of sub-section (1) exempting certain bonds, debentures or other *securities* from being stamped and from being chargeable with certain further duty shall apply to the bonds, debentures or other *securities* of all outstanding loans of the kind mentioned therein, and all such bonds, debentures or other *securities* shall be valid, whether the same are stamped or not:

Provided that nothing herein contained shall exempt the local authority which has issued such bonds, debentures or other *securities* from the duty chargeable in respect thereof prior to the twenty-sixth day of March, 1897, when such duty has not already been paid or remitted by order issued *by the Governor General in Council.*

[54 & 55 Vict., c. 59, s. 115 (5).]

(3) *In the case of wilful neglect to pay the duty required by this section, the local authority shall be liable to forfeit to the Government a sum equal to ten per centum upon the amount of duty payable, and a like penalty for every month after the first month during which the neglect continues.*

[S. 8, Act I of 1879.]

Power to reduce, remit *or compound* duties.

9. The Governor General in Council may, by *rule or* order published in the Gazette of India,—

(a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of British India, the duties with which any instruments or any particular class of instruments, or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and

[Old cl. (5)—omitted—see Act X of 1879, s. 21.]

(b) *provide for the composition or consolidation of duties in the case of issues by any incorporated company or other body corporate of debentures, bonds or other marketable securities.*

B.—Of Stamps and the mode of using them.

[S. 9, Act I of 1879.]

Duties how to be paid.

10. (1) Except as otherwise expressly provided in this Act, all duties with which any instruments are chargeable shall be paid, and such payment shall be indicated on such instruments, by means of stamps—

(a) according to the provisions herein contained, or,

(b) when no such provision is applicable thereto—as the Governor General in Council may by rule direct.

(2) The rules made under *sub-section 1* may, among other matters, regulate—

(a) in the case of each kind of instrument—the description of stamps which may be used,

(b) in the case of instruments stamped with impressed stamps—the number of Stamps which may be used,

(c) in the case of hundis—the size of the paper on which they are written.

[S. 10, Act I of 1879.]

Use of adhesive stamps.

11. The following instruments may be stamped with adhesive stamps, namely:

(a) instruments chargeable with the duty of one anna, except parts of bills of exchange payable otherwise than on demand and drawn insets;

The Indian Stamp Bill.

(*Chapter II.—Stamp-duties.—Sections 12-21.*)

(*b*) bills of exchange, cheques and promissory notes drawn or made out of British India;

(*c*) entry as an advocate, vakil or attorney on the roll of a High Court;

(*d*) notarial acts; and

(*e*) transfers by endorsement of shares *in any incorporated company or other body corporate.*

[S. 11, Act I of 1879.]

Cancellation of adhesive stamps.

12. (*1*) (*a*) Whoever affixes any adhesive stamp to any instrument chargeable with duty and which has been executed by any person shall, when affixing such stamp, cancel the same so that it cannot be used again; and

(*b*) whoever executes any instrument on any paper bearing an adhesive stamp shall, at the time of execution, unless such stamp has been already cancelled in manner aforesaid, cancel the same so that it cannot be used again.

(*2*) Any instrument bearing an adhesive stamp which has not been cancelled so that it cannot be used again shall, so far as such stamp is concerned, be deemed to be unstamped.

(3) *In the case of an adhesive stamp the person required by sub-section* (*1*) *to cancel the stamp may cancel it by writing on or across the stamp his name or initials or the name or initials of his firm with the true date of his so writing.*

[S. 12, Act I of 1879.]

How instruments stamped with impressed stamps are to be written.

13. Every instrument written upon paper stamped with an impressed stamp shall be written in such manner that the stamp may appear on the face of the instrument and cannot be used for or applied to any other instrument.

[S. 13, Act I of 1879.]

Only one instrument to be on same stamp.

14. No second instrument chargeable with duty shall be written upon a piece of stamped paper upon which an instrument chargeable with duty has already been written:

Provided that nothing in this section shall prevent any endorsement which is duly stamped or is not chargeable with duty being made upon any instrument for the purpose of transferring any right created or evidenced thereby, or of acknowledging the receipt of any money or goods the payment or delivery of which is secured thereby.

[S. 14, Act I of 1879.]

Instrument written contrary to section 13 or 14 deemed unstamped.

15. Every instrument written in contravention of section *13* or *section 14* shall be deemed to be unstamped.

[S. 15, Act of 1879.]

Denoting duty.

16. Where the duty with which an instrument is chargeable, or its exemption from duty, depends in any manner upon the duty actually paid in respect of another instrument, the payment of such last-mentioned duty shall, if application be made in writing to the Collector for that purpose, and on production of both the instruments, be denoted upon such first-mentioned instrument *by endorsement under the hand of the collector or* in such *other* manner *(if any)* as the Governor General in Council may by rule *prescribe.*

C.—Of the time of stamping Instruments.

[S. 16, Act I of 1879.]

Instruments executed in British India.

17. All instruments chargeable with duty and executed by any person in British India shall be stamped before or at the time of execution.

[S. 17, Act I of 1879.]

Instruments other than bills, cheques and notes executed out of British India.

18. (*1*) Every instrument chargeable with duty executed only out of British India, and not being a bill of exchange, cheque or promissory note, may be stamped within three months after it has been first received in British India.

(*2*) Where any such instrument cannot, with reference to the description of stamp prescribed therefor, be duly stamped by a private person, it may be taken within the said period of three months to the Collector, *who* shall stamp the same in such manner as the Governor General in Council may by rule prescribe, with a stamp of such value as the person so taking such instrument may require and pay for.

[S. 18, Act I of 1879.]

Bills, cheques and notes drawn out of British India.

19. The first holder in British India of any bill of exchange, cheque or promissory note drawn or made out of British India shall, before he presents the same for acceptance or payment or endorses, transfers or otherwise negotiates the same in British India, affix thereto the proper stamp and cancel the same:

Provided that—

(*a*) if, at the time any such bill *of exchange,* cheque or note comes into the hands of any holder thereof in British India, the proper adhesive stamp is affixed thereto and cancelled in manner prescribed by section *12* and such holder has no reason to believe that such stamp was affixed or cancelled otherwise than by the person and at the time required by this Act, such stamp shall, so far as relates to such holder, be deemed to have been duly affixed and cancelled.

(*b*) Nothing contained in this proviso shall relieve any person from any penalty incurred by him for omitting to affix or cancel a stamp.

D.—Of Valuations for Duty.

[Old s. 19—omitted—Cl. cl. 20 (*a*) of bill.]

Conversion of amount expressed in foreign currencies.

20. (*1*) Where an instrument is chargeable with *ad valorem* duty in respect of any money expressed in any currency *other than that of British India,* such duty shall be calculated on the value of such money in the currency of British India according to the current rate of exchange on the day of the date of the instrument.

[S. 20, Act I of 1879.] ["Other Foreign or Colonial" in old section.]

(*2*) *The Governor-General in Council may from time to time by notification in the Gazette of India, prescribe a rate of exchange for the conversion of British or any foreign currency into the currency of British India for the purposes of calculating stamp duty, and such rate shall be deemed to be the current rate for the purposes of sub-section* (*1*).

[S. 21, Act I of 1879.]

Stock and marketable securities how to be valued.

21. Where an instrument is chargeable with *ad valorem* duty in respect of any stock or of any marketable *or other* security, such duty shall be calculated on the value of

The Indian Stamp Bill.

(*Chapter II.—Stamp-duties.—Sections 22-28.*)

such stock or security according to the average price *or the value* thereof on the day of the date of the instrument.

[S. 22 Act I, of 1879.] 22. Where an instrument contains a statement of current rate of exchange, or average price, as the case may require, and is stamped in accordance with such statement, it shall, so far as regards the subject-matter of such statement, be presumed, until the contrary is proved, to be duly stamped.

Effect of statement of rate of exchange or average price.

[S. 23, Act I of 1879.] 23. Where interest is expressly made payable by the terms of an instrument, such instrument shall not be chargeable with duty higher than that with which it would have been chargeable had no mention of interest been made therein.

Instruments reserving interest.

[S. 24, Act I of 1879.] 24. Where any property is transferred to any person in consideration, wholly or in part, of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, whether being or constituting a charge or incumbrance upon the property or not, such debt, money or stock is to be deemed the whole or part, as the case may be, of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty:

How transfer in consideration of debt, or subject to future payment, etc., to be charged.

[*Cf.* s. 5, Act VI of 1894.] *Provided that nothing in this section shall apply to any such certificate of sale as is mentioned in article 18 of Schedule I.*

EXPLANATION.—In the case of a sale of property subject to a mortgage or other incumbrance any unpaid mortgage money or money charged, together with the interest (if any) due on the same, shall be deemed to be part of the consideration for the sale.

ILLUSTRATIONS.

(*1*) *A owes B Rs. 1,000. A sells a property to B, the consideration being Rs. 500 and the release of the previous debt of Rs. 1,000. Stamp duty is payable on Rs. 1,500.*

(*2*) *A sells a property to B for Rs. 500 which is subject to a mortgage to C for Rs. 1,000, and unpaid interest Rs. 200. Stamp duty is payable on Rs. 1,700.*

[S. 25, Act I of 1879.] 25. Where an instrument is executed to secure the payment of an annuity or other sum payable periodically, or where the consideration for a conveyance is an annuity or other sum payable periodically, the amount secured by such instrument, or the consideration for such conveyance (as the case may be), shall, for the purposes of this Act, be deemed to be—

Valuation in case of annuity, etc.

(*a*) where the sum is payable for a definite period so that the total amount to be paid can be previously ascertained—such total amount;

(*b*) where the sum is payable in perpetuity or for an indefinite time not terminable with any life in being at the date of such instrument or conveyance—the total amount which, according to the terms of such instrument or conveyance, will or may be payable during the period of twenty years *calculated from the date on which the first payment becomes due*; and

["Next after the date of such instrument or conveyance" in old s. 25.]

(*c*) where the sum is payable for an indefinite time terminable with any life in being at the date of such instrument or conveyance—the total amount which will or may be payable as aforesaid during the period of twelve years *calculated from the date on which the first payment becomes due.*

[Ditto.]

[S. 26, Act I of 1879.] 26. Where the amount or value of the subject-matter of any instrument chargeable with *ad valorem* duty cannot be, or (in the case of an instrument executed before *the commencement of* this Act) could not have been, ascertained, at the date of its execution or first execution, nothing shall be claimable under such instrument more than the highest amount or value for which, if stated in an instrument of the same description, the stamp actually used would, at the date of such execution, have been sufficient.

Stamp where value of subject-matter is indeterminate.

Provided that in the case of a lease of a mine in which a share of the produce is received as the rent, or part of the rent, it shall be sufficient to have estimated such share for the purpose of stamp duty, at Rs. 20,000 a year, and the whole amount of such share, whatever it may be, shall be claimable under such lease.

[S. 27, Act I of 1879.] 27. The consideration, if any, and all other facts and circumstances affecting the chargeability of any instrument with duty, or the amount of the duty with which it is chargeable, shall be fully and truly set forth therein.

Facts affecting duty to be set forth in instrument.

[S. 28, Act I of 1879.] 28. (*1*) Where any property has been contracted to be sold for one consideration for the whole, and is conveyed to the purchaser in separate parts by different instruments, the consideration shall be apportioned in such manner as the parties think fit, so that a distinct consideration for each separate part is set forth in the conveyance relating thereto, and such conveyance shall be chargeable with *ad valorem* duty in respect of such distinct consideration.

Direction as to duty in case of certain conveyances.

(*2*) Where property contracted to be purchased for one consideration for the whole, by two or more persons jointly, or by any person for himself and others, or wholly for others, is conveyed in parts by separate instruments to the persons by or for whom the same was purchased, for distinct parts of the consideration, the conveyance of each separate part shall be chargeable with *ad valorem* duty in respect of the distinct part of the consideration therein specified.

(*3*) Where a person, having contracted for the purchase of any property but not having obtained a conveyance thereof, contracts to sell the same to any other person, and the property is in consequence conveyed immediately to the sub-purchaser, the conveyance shall be chargeable with *ad valorem* duty in respect of the consideration for the sale by the original purchaser to the sub-purchaser.

The Indian Stamp Bill.

(Chapter II.—Stamp-duties.—Sections 29-30. Chapter III.—Adjudication as to Stamps.—Section 31.)

(*i*) Where a person having contracted for the purchase of any property, but not having obtained a conveyance thereof, contracts to sell the whole, or any part thereof, to any other person or persons, and the property is in consequence conveyed by the original seller to different persons, in parts, the conveyance of each part sold to a sub-purchaser shall be chargeable with *ad valorem* duty in respect only of the consideration paid by such sub-purchaser, without regard to the amount or value of the original consideration; and the conveyance of the residue (if any) of such property to the original purchaser shall be chargeable with *ad valorem* duty in respect only of the excess of the original consideration over the aggregate of the considerations paid by the sub-purchasers:

Provided that the duty on such last-mentioned conveyance shall in no case be less than one rupee.

(*j*) Where a sub-purchaser takes an actual conveyance of the interest of the person immediately selling to him, which is chargeable with *ad valorem* duty in respect of the consideration paid by him, and is duly stamped accordingly, any conveyance to be afterwards made to him of the same property by the original seller shall be chargeable with a duty equal to that which would be chargeable on a conveyance for the consideration obtained by such original seller, or, where such duty would exceed five rupees, with a duty of five rupees.

E.—Duty by whom payable.

[S. 29, Act I of 1879—Nos. of articles altered and subjects set out.]

29. In the absence of an agreement to the contrary, the expense of providing the proper stamp shall be borne—

Duties by whom payable.

(*a*) in the case of any instrument described in *any of the following articles* of *Schedule I, namely;*

No. 2. (*Administration Bond*),
No. 6. (*Agreement to mortgage*),
No. 13. (*Bill of exchange*),
No. 15. (*Bond*),
No. 16. (*Bottomry Bond*),
No. 26. (*Customs Bond*),
No. 27. (*Debenture*),
No. 32. (*Further charge*),
No. 34. (*Indemnity-Bond*),
No. 40. (*Mortgage-Deed*),
No. 49. (*Promissory note*),
[Nos. 27, 49 & 62 (*b*) added.]
No. 54. (*Reconveyance of mortgaged property*),
No. 55. (*Release*),
No. 56. (*Respondentia Bond*),
No. 57. (*Security Bond or mortgage deed*),
No. 58. (*Settlement*),
No. 62. (*a*) (*Transfer of shares in an incorporated company or other body corporate*),
No. 62. (*b*) *Transfer of debentures being marketable securities whether the debenture is liable to duty or not, except debentures provided for by section 8,*

(*c*) *Transfer of any interest secured by a bond, Mortgage-deed or Policy of insurance,*

by the person drawing, making or executing such instrument:

(*b*) *in the case of a copy of a receipt signed or attested by the person required by law to give the receipt—by the person demanding the copy.*

(*c*) in the case of a policy of insurance—by the *person effecting the insurance*: [Cl. el. (*b*).]

(*d*) in the case of a conveyance—by the grantee: in the case of a lease or agreement to lease—by the lessee or intended lessee: [Cl. (*c*).]

(*e*) in the case of a counterpart of a lease—by the lessor: [Cl. (*d*).]

(*f*) in the case of an instrument of exchange—by the parties in equal shares:

(*g*) in the case of a certificate of sale—by the purchaser of the property to which such certificate relates: and

(*h*) in the case of an instrument of partition—by the parties thereto in proportion to their respective shares in the property comprised therein, or, when the partition is made in execution of an order passed by a Revenue-authority, *or Civil Court* in such proportion as such Authority directs: [Cl. (*e*).]

Provided that such authority or court may in its discretion remit the duty payable on such portion of an estate or holding as may remain undivided in consequence of some shareholders continuing to hold jointly.

Illustration

A property held by A, B, C and D of the value of Rs. 1,000 is divided by order of the Revenue-authority. A and B retain their shares which are valued at Rs. 600 in joint possession, while C and D take separate shares of the value of Rs. 200 each. The Revenue-authority may remit the duty as regards A and B and direct C and D to pay duty proportionate to the value of the shares allotted to them respectively, that is to say, Rs. 200 each.

[S. 58, Act I of 1879.]

30. Any person receiving any money exceeding twenty rupees in amount, or any bill of exchange, cheque or promissory note for an amount exceeding twenty rupees, or receiving in satisfaction *or part satisfaction* of a debt any moveable property exceeding twenty rupees in value, shall, on demand by the person paying or delivering such money, bill, cheque, note or property, give a duly stamped receipt for the same.

Obligation to give receipt in certain cases.

CHAPTER III.

ADJUDICATION AS TO STAMPS.

[S. 30, Act I of 1879.]

31. When any instrument, whether executed or not, and whether previously stamped or not, is brought to the Collector, and the person bringing it applies to have the opinion of that officer as to the duty (if any) with which it is chargeable, and pays a fee of such amount

Adjudication as to proper stamp.

The Indian Stamp Bill.

(Chapter III.—Adjudication as to Stamps.—Section 32. Chapter IV.—Instruments not duly stamped.—Sections 33-35)

(not exceeding five rupees and not less than eight annas) as the Collector may in each case direct, the Collector shall determine the duty (if any) with which, in his judgment, the instrument is chargeable.

(2) For *the* purpose *the Collector may* require to be furnished with an abstract of the instrument, and also with such affidavit or other evidence as he may deem necessary to prove that all the facts and circumstances affecting the chargeability of the instrument with duty, or the amount of the duty with which it is chargeable, are fully and truly set forth therein, and may refuse to proceed upon any such application until such abstract and evidence have been furnished accordingly:

Provided that—

(*a*) no evidence furnished in pursuance of this section shall be used against any person in any civil proceeding, except in an enquiry as to the duty with which the instrument to which it relates is chargeable; and

(*b*) every person by whom any such evidence is furnished shall, on payment of the full duty with which the instrument to which it relates is chargeable, be relieved from any penalty he may have incurred under this Act by reason of the omission to state truly in such instrument any of the facts or circumstances aforesaid.

[S. 31, Act 1 of 1879.]

Certificate by Collector.

32. (1) When an instrument brought to the Collector under section *31* is, in his opinion, one of a description chargeable with duty, and

(*a*) the Collector determines that it is already fully stamped, or

(*b*) the duty determined by the Collector under section *31* or such a sum as, with the duty already paid in respect of the instrument, is equal to the duty so determined, has been paid,

the Collector shall certify by endorsement on such instrument that the full duty (stating the amount) with which it is chargeable has been paid.

(2) When such instrument is, in his opinion, not chargeable with duty, the Collector shall certify in manner aforesaid that such instrument is not so chargeable.

(3) Any instrument upon which an endorsement has been made under this section shall be deemed to be duly stamped, or not chargeable with duty, as the case may be; and, if chargeable with duty, shall be receivable in evidence or otherwise, and may be acted upon and registered as if it had been orginally duly stamped.

Provided that nothing in this section shall authorize the Collector to endorse—

(*a*) any instrument executed or first executed in British India and brought to him after the expiration of one month from the date of its execution, or first execution, as the case may be;

(*b*) any instrument executed or first executed out of British India and brought to him after the expiration of three months after it has been first received in British India; or

(*c*) any instrument chargeable with the duty of one anna, or any bill of exchange or promissory note, when brought to him after the drawing or execution thereof on paper not duly stamped.

[Old s. 32.—*omitted* as now unnecessary.]

CHAPTER IV.

INSTRUMENTS NOT DULY STAMPED.

[S. 33, Act 1 of 1879.]

Examination and impounding of instruments.

33. (1) Every person having by law or consent of parties authority to receive evidence, and every person in charge of a public office, except an officer of police, before whom any instrument, chargeable, in his opinion, with duty, is produced or comes, in the performance of his functions, shall, if it appears to him that such instrument is not duly stamped, impound the same.

(2) For that purpose every such person shall examine every instrument so chargeable and so produced or coming before him, in order to ascertain whether it is stamped with a stamp of the value and description required by the law in force in British India when such instrument was executed or first executed:

Provided that—

(*a*) nothing herein contained shall be deemed to require any Magistrate or Judge of a Criminal Court to examine or impound, *if he does not think fit so to do*, any instrument coming before him in the course of any proceeding other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1882:

(*b*) in the case of a Judge of a High Court, the duty of examining and impounding any instrument under this section may be delegated to such officer as the Court appoints in this behalf.

(3) For the purposes of this section, in cases of doubt,—

(*a*) *the Governor General in Council may determine what offices shall be deemed to be public offices, and*

(*b*) the Local Government may determine who shall be deemed to be persons in charge of public offices.

[New.]

Special provision as to unstamped receipts.

34. Where any receipt chargeable with a duty of one anna is tendered to or produced before any officer unstamped in the course of the audit of any public account, such officer may in his discretion instead of impounding the instrument, require a duly stamped receipt to be substituted therefor.

[S. 34, Act 1 of 1879.]

Instruments not duly stamped inadmissible in evidence, etc.

35. No instrument chargeable with duty shall be admitted in evidence for any purpose by any person having by law or consent of parties authority to receive evidence, or shall be acted upon, registered or authenticated by any such person or by any public officer, unless such instrument is duly stamped:

Provided that—

(*a*) any such instrument not being an instrument chargeable with a duty of one anna only, or a bill of exchange or promissory note, shall, subject to all just exceptions, be admitted in evidence on payment of the duty with which the same is chargeable or (in the case of an instrument insufficiently stamped) of the amount required

Instruments admissible on payment of duty and penalty;

The Indian Stamp Bill.

(Chapter IV.—Instruments not duly stamped.—Sections 36-42.)

to make up such duty, together with a penalty of five rupees, or, when ten times the amount of the proper duty or deficient portion thereof exceeds five rupees, of a sum equal to ten times such duty or portion;

(*b*) *where any person from whom a stamped receipt could have been demanded has given an unstamped receipt and brings a suit in which such receipt, if stamped would be admissible in evidence against him, then such receipt shall be admitted in evidence on payment of a penalty of one rupee by the person tendering it.*

(*c*) nothing herein contained shall prevent the admission of any instrument in evidence in any proceeding in a Criminal Court other than a proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1882;

and in certain criminal proceedings;

(*d*) *nothing herein contained shall prevent the admission of any instrument in any Court when such instrument has been executed by or on behalf of the Government.*

and when executed by or on behalf of Government.

[Clause (3) of proviso to s. 34, Act 1 of 1879.]

36. *Where* an instrument has been admitted in evidence, such admission shall not, except as provided in section *61*, be called in question at any stage of the same suit or proceeding on the ground that the instrument has not been duly stamped.

Where admission of instrument not to be questioned.

[New.]

37. *Subject to such rules as may be made in this behalf, where an instrument bears a stamp of sufficient amount but of improper description, it may, on payment of the duty with which the same is chargeable, be certified to be duly stamped and shall then be deemed to have been duly stamped as from the date of its execution.*

Admission of improperly stamped instruments.

[S. 35, Act 1 of 1879.]

38. (*1*) When the person impounding an instrument under section 33 has by law or consent of parties authority to receive evidence and admits such instrument in evidence upon payment of a penalty as provided by section *35 or of duty as provided by section 37*, he shall send to the Collector an authenticated copy of such instrument, together with a certificate in writing, stating the amount of the duty and penalty levied in respect thereof, and shall send such amount to the Collector, or to such person as he may appoint in this behalf.

Instruments impounded how dealt with.

(*2*) In every other case, the person so impounding an instrument shall send it in original to the Collector.

[S. 36, Act 1 of 1879.]

39. (*1*) When a copy of an instrument is sent to a Collector under section *38 sub-section* (*1*), he may, if he thinks fit, upon application made to him in this behalf *or, if no application is made, with the consent of the Chief Controlling Revenue-authority*, refund any portion of the penalty in *excess of five rupees* which has been paid in *respect of such instrument; or*

Collector's power to refund penalty paid under section *38, sub-section* (*1*).

(*2*) when such instrument has been impounded only because it has been written in contravention of section *13* or section *14*, he may refund the whole penalty so paid.

[S. 37, Act 1 of 1879.]

40. (*1*) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under section *38 sub-section* (*2*), (*not being* an instrument chargeable with a duty of one anna only or a bill of exchange or promissory note) he shall adopt the following procedure:

Collector's power to stamp instruments impounded.

(*a*) if he is of opinion that such instrument is duly stamped, or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable (as the case may be), and shall, upon application made to him in this behalf, deliver such instrument to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct;

(*b*) if the Collector is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of the proper duty or the amount required to make up the same, together with a penalty of five rupees; or, if ten times the amount of the proper duty or of the deficient portion thereof exceeds five rupees, then such penalty, not less than five rupees and not more than ten times the amount of such duty or portion as he thinks fit:

Provided that, when such instrument has been impounded only because it has been written in contravention of section *13* or section *14*, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(*2*) Every certificate under clause (*a*) of *sub-section* (*1*) shall, for the purposes of this Act, be conclusive evidence of the matters stated therein.

["Which is" after "and" omitted.] [S. 38, Act 1 of 1879.]

41. If any instrument chargeable with duty and not duly stamped (*not being* an instrument chargeable with a duty of one anna only, or a bill of exchange or promissory note) is produced by any person of his own motion before the Collector within one year from the date of its execution or first execution, and such person brings to the notice of the Collector the fact that such instrument is not duly stamped, and offers to pay to the Collector the amount of the proper duty, or the amount required to make up the same, and the Collector is satisfied that the omission to duly stamp such instrument has been occasioned by accident, mistake or urgent necessity, he may, instead of proceeding under sections 33 and *40*, receive such amount and proceed as next hereinafter prescribed.

Instruments unduly stamped by accident.

[S. 39, Act 1 of 1879.]

42. (*1*) When the duty and penalty (if any) leviable in respect of any instrument have been paid under section *35*, section *40* or section *41*, the person admitting such instrument in evidence, or the Collector (as the case may be), shall certify by endorsement thereon that the proper duty or (as the case may be) the proper duty and penalty (stating the amount of

Endorsement of instruments on which duty has been paid under sections *35, 40* or *41*.

The Indian Stamp Bill.

(Chapter IV.—Instruments not duly stamped.—Sections 43-48. Chapter V.—Allowances for Stamps in certain cases.—Section 49.)

each) have been levied in respect thereof, and the name and residence of the person paying them.

(2) Every instrument so endorsed shall thereupon be admissible in evidence, and may be registered and acted upon and authenticated as if it had been duly stamped, and shall be delivered on his application in this behalf to the person from whose possession it came into the hands of the officer impounding it, or as such person may direct:

Provided that—

(*a*) no instrument which has been admitted in evidence upon payment of duty and a penalty under section *35* shall be so delivered before the expiration of one month from the date of such impounding, or if the Collector has certified that its further detention is necessary, and has not cancelled such certificate:

(*b*) nothing in this section shall affect the Code of Civil Procedure, section 144, clause 3. XIV of 1882.

[S. 40, Act I of 1879.]

43. The *taking of proceedings or the* payment of a penalty under this chapter in respect of *any* instrument shall not bar the prosecution of any person who appears to have committed an offence against the Stamp-law in respect of such instrument:

Prosecution for offence against Stamp-law.

Provided that no such prosecution shall be instituted in the case of any instrument in respect of which such a penalty has been paid, unless it appears to the Collector that the offence was committed with an intention of evading payment of the proper duty.

[S. 41, Act I of 1879.]

44. (*1*) When any duty or penalty has been paid under section *35*, section *40* or section *41*, by any person in respect of an instrument, and, by agreement, or under the provisions of section 29 or any other enactment in force at the time such instrument was executed, some other person was bound to bear the expense of providing the proper stamp for such instrument, the first-mentioned person shall be entitled to recover from such other person the amount of the duty or penalty so paid.

Persons paying duty or penalty may recover same in certain cases.

(*2*) For the purpose of such recovery any certificate granted in respect of such instrument under section *42* shall be conclusive evidence of the matters therein certified.

(*3*) *Such amount may be included in any order as to costs in any suit to which such persons are parties and in which such instrument has been tendered in evidence.*

45. (*1*) *Where any penalty is payable under section 35 or section 40, the Chief Controlling Revenue-authority may, upon application in writing, remit such penalty wholly or in part.*

Power to Revenue authority to remit or refund penalty or refund excess duty in certain cases.

[S. 42, Act I of 1879.]

(*2*) *Where* any penalty is paid under section *35* or section *40*, the Chief Controlling Revenue-authority may, upon application in writing made within one year from the date of the payment, refund such penalty wholly or in part.

(*3*) *Where in the opinion of the Chief Controlling Revenue-authority stamp-duty in excess of that which is legally chargeable has been charged and paid under section 35 or section 40, such authority may, upon application in writing made within three months of the order charging the same, refund the excess.*

46. (*1*) If any instrument sent to a Collector under *sub-section 2* of section *38* be lost, destroyed or damaged during transmission, the person sending the same shall not be liable for such loss, destruction or damage. [S. 43, Act I of 1879.]

Non-liability for loss of instruments sent under section *38*.

(*2*) When any instrument is about to be so sent, the person from whose possession it came into the hands of the person impounding the same may require a copy thereof to be made at the expense of such first-mentioned person and authenticated by the person impounding such instrument.

Copy may be made of instruments so sent.

47. When any bill of exchange or *cheque* chargeable with the duty of one anna, is presented for payment unstamped, the person to whom it is so presented may affix thereto the necessary adhesive stamp, and, upon cancelling the same in manner hereinbefore provided, may pay the sum payable upon such bill, or cheque, and may charge the duty against the person who ought to have paid the same, or deduct it from the sum payable as aforesaid, and such bill, or cheque shall, so far as respects the duty, be deemed good and valid. ["Or promissory note"—omitted.] [S. 44, Act I of 1879.] ["Or any cheque" after "anna" omitted.]

Power of payer to stamp bills and cheques received by him unstamped.

Provided that nothing herein contained shall relieve any person from any penalty *or proceeding to which he may be liable* in relation to such bill, or cheque. ["Note" after "bill" omitted in three places.]

48. *All duties, penalties and other sums required to be paid under this Chapter may be recovered by the Collector by distress and sale of the moveable property of the person from whom the same are due or by any other process for the time being in force for the recovery of arrears of land revenue.* [New]

Recovery of duties and penalties.

CHAPTER V.

ALLOWANCES FOR STAMPS *IN CERTAIN CASES.*

49. Subject to such rules as may be made by the Governor General in Council as to the evidence *to be required, or the enquiry to be made, the Collector may, on application made within the period prescribed in section 50, and if he is satisfied as to the facts, make allowance* for impressed stamps spoiled in the cases hereinafter mentioned, namely: [S. 51, Act I of 1879.]

Allowance for spoiled stamps.

(*a*) the stamp on any paper inadvertently and undesignedly spoiled, obliterated or by *error in writing or* any *other* means rendered unfit for the purpose intended, before any instrument written thereon is executed by any person:

(*b*) *the stamp on any document which is written out wholly or in part but which*

The Indian Stamp Bill.

(Chapter V.—Allowances for Stamps in certain cases.—Sections 50-52.)

is not signed or executed by any party thereto :

(c) *in the case of bills of exchange, cheques or promissory notes—*

[Cl. (a), s. 9, 54 & 55 Vict., Cap. 38, & Cl. (a) s. 51 Act I, of 1879 first portion of which before "and provided" is omitted.]

(1) *the stamp on any bill of exchange or cheque signed by or on behalf of the drawer which has not been accepted or made use of in any manner whatever or delivered out of his hands for any purpose other than by way of tender for acceptance* and provided that the paper on which any such stamp is impressed does not bear any signature intended as or for the acceptance of any bill of exchange or cheque to be afterwards written thereon :

[Cl. (b) s. 9, 54 55 Vict., c. 38.]

(2) *the stamp on any promissory note signed by or in behalf of the maker which has not been made use of in any manner whatever or delivered out of his hands* :

[Cl. (c) s. 51, Act I of 1879.]

(3) the stamp used or intended to be used for any bill of exchange, cheque or promissory note signed by, or on behalf of, the drawer thereof, but which from any omission or error has been spoiled or rendered useless, although the same, being a bill of exchange or cheque, may have been presented for acceptance or accepted or endorsed, or, being a promissory note, may have been delivered to the payee : provided that another completed and duly stamped bill of exchange, cheque or promissory note is produced identical in every particular, except in the correction of such omission or error as aforesaid, with the spoiled bill, cheque or note :

[Cl. (d) s. 51, Act I of 1879.]

(d) the stamp used for an instrument executed by any party thereto *which*—

["By a competent Court" after "found" omitted.]

(1) *has been* afterwards found to be absolutely void in law from the beginning ;

(2) *has been* afterwards found unfit, by reason of any error or mistake therein, for the purpose originally intended :

[Cf. italicized words in cl. 5 below, omitted here.]

(3) by reason of the death of any person, by whom it is necessary that it should be executed, without having executed the same, or of the refusal of any such person to execute the same, cannot be completed so as to effect the intended transaction in the form proposed :

(4) for want of the execution thereof by some material party, and his inability or refusal to sign the same, is in fact incomplete and insufficient for the purpose for which it was intended :

[Italicized words from Cl. (d) (3), s. 51, Act I of 1879.]

(5) by reason of the refusal of any person to act under the same, *or to advance any money intended to be thereby secured*, or by the refusal or non-acceptance of any office thereby granted, totally fails of the intended purpose :

(6) becomes useless in consequence of the transaction intended to be thereby effected being effected by some other instrument *between the same parties and bearing a stamp of not less value* :

(7) is inadvertently and undesignedly spoiled, and in lieu whereof another instrument made between the same parties and for the same purpose is executed and duly stamped :

Provided that in the case of an executed instrument, *no legal proceeding has been commenced in which the instrument could or would have been given or offered in evidence and that the instrument* is given up to be cancelled. [Cf. 54 & 55 Vict., Cap. 38, s. 9, proviso (b) to s. 51, Act I of 1879.]

EXPLANATION.—A stamp duty received and certified by the Collector under section 32, is an impressed stamp within the meaning of this section.

50. The application for relief *under section 49* [Cl. proviso (c) to s. 51, Act I of 1879.]

When application for relief must be made.

must be made within *the following periods, that is to say*—

(1) *in the cases mentioned in clause (d) (3) within two months of the date of the instrument*

(2) in the case of *a* stamped paper *on which no instrument has been executed by any of the parties thereto* within six months after the stamp has been spoiled :

(3) *in the case of a stamped paper in which an instrument has been executed by any of the parties thereto* within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed.

Provided that—

(a) when the spoiled instrument has been *for sufficient reasons* sent out of British India, *the* application may be made within six months after it has been received back in British India :

(b) when from unavoidable circumstances any instrument for which another instrument has been substituted cannot be given up to be cancelled within the aforesaid period, *the application may be made* within six months after the date of execution of the substituted instrument.

51. *The Chief Controlling Revenue-authority may, without limit of time, make allowance for stamped papers used for printed forms of instruments by any incorporated company or other body corporate, if for any sufficient reason such forms have ceased to be required by the said company or body corporate, provided that such authority is satisfied that the duty in respect of such stamped papers has been duly paid.* [New.]

Allowance in case of printed forms no longer required by Corporations.

52(a). When any person has inadvertently used for an instrument chargeable with duty, a stamp of a description other than that prescribed for such instrument by the rules made under this Act, or a stamp of greater value than was necessary, or has inadvertently used any stamp for an instrument not chargeable with any duty, or [S. 52, Act I of 1879.]

Allowance for misused stamps.

The Indian Stamp Bill.

(Chapter V.—Allowances for Stamps in certain cases.—Sections 53-55. Chapter VI.—Reference and Revision.—Sections 56-59.)

(*b*) when any stamp used for an instrument has been inadvertently rendered useless under section *15*, owing to such instrument having been written in contravention of the provisions of section *13*,

the Collector may, on application made within six months after the date of the instrument, or, if it is not dated, within six months after the execution thereof by the person by whom it was first or alone executed, and upon the instrument, if chargeable with duty, being re-stamped with the proper duty, cancel and allow as spoiled the stamp so misused or rendered useless.

[S. 53, Act I of 1879.]

Allowance *for spoiled or misused stamps* how to be made.

53. In any case in which allowance is made for spoiled or misused stamps, the Collector may give in lieu thereof

(*a*) other stamps of the same description and value, or

(*b*) if required and he thinks fit, stamps of any other description to the same amount in value, or,

(*c*) at his descretion, the same value in money, deducting one anna for each rupee or fraction of a rupee.

[S. 54, Act I of 1879.]

Allowance for stamps not required for use.

54. When any person is possessed of a stamp *or stamps* which has not been spoiled or rendered unfit or useless for the purpose intended, but for which he has no immediate use, the Collector shall repay to such person the value of such stamp *or stamps* in money, deducting one anna for each rupee or portion of a rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction

(*a*) that *such stamp or stamps were* purchased by such person with a *bonâ fide* intention to use *them*, and

(*b*) that he has paid the full price thereof, and

(*c*) that *they were* so purchased within the period of six months next preceding the date on which *they were* so delivered:

Provided that where the person is a licensed vendor of stamps the Collector may, if he thinks fit, make the repayment without any such deduction as aforesaid.

[New.]

Allowance on renewal of certain debentures.

55. *When any duly stamped debenture is renewed by the issue of a new debenture in the same terms, the Collector shall upon application made within one month repay to the person issuing such debenture, the value of the stamp on the original or on the new debenture whichever shall be less:*

Provided that, the original debenture be produced before the Collector and be cancelled by him in such manner as the Governor General in Council may direct.

EXPLANATION.—A debenture shall be deemed to be renewed in the same terms within the meaning of this section notwithstanding the following changes:

(*a*) *the issue of two or more debentures in place of one original debenture, the total amount secured being the same;*

(*b*) *the issue of one debenture in place of two or more original debentures, the total amount secured being the same;*

(*c*) *the substitution of the name of the holder at the time of renewal for the name of the original holder, and*

(*d*) *the alteration of the rate of interest or the dates of payment thereof.*

CHAPTER VI.

REFERENCE AND REVISION.

Control of Chief Revenue-authority.

56.(*1*) *The powers exercisable by a Collector under Chapter IV and Chapter V shall in all cases be subject to the control of the Chief Controlling Revenue-authority.*

[S. 45, Act I of 1879.]

Procedure where Collector feels doubt as to duty chargeable.

(*2*) If any Collector, acting under section *31*, section *40* or section *41*, feels doubt as to the amount of duty with which any instrument is chargeable, he may draw up a statement of the case, and refer it, with his own opinion thereon, for the decision of the Chief Controlling Revenue-authority.

(*3*) Such Authority shall consider the case and send a copy of its decision to the Collector, *who* shall proceed to assess and charge the duty (if any) in conformity with such decision.

[S. 46, Act I of 1879.]

Reference by Revenue-authority to High Court.

57. (*1*) The Chief Controlling Revenue-authority may state any case referred to it under section *56*, *sub-section* (*2*) or otherwise coming to its notice, and refer such case, with its own opinion thereon,

(*a*) if the case arises in the territories for the time being administered by the Governor of Fort St. George in Council or the Governor of Bombay in Council—to the High Court of Judicature at Madras or Bombay, as the case may be:

(*b*) if it arises in the North-Western Provinces or Oudh *or in Ajmere*—to the High Court of Judicature for the North-Western Provinces:

(*c*) if it arises in the territories for the time being administered by the Lieutenant-Governor of the Punjab—to the Chief Court of the Punjab:

(*d*) if it arises in the Central Provinces—to the High Court of Judicature at Bombay: and

(*e*) if it arises in any other part of British India—to the High Court of Judicature at Fort William.

(*2*) Every such case shall be decided by not less than three Judges of the High Court or Chief Court to which it is referred, and in case of difference the opinion of the majority shall prevail.

[S. 47, Act I of 1879.]

Power of Court to call for further particulars.

58. If the High Court or Chief Court is not satisfied that the statements contained in the case are sufficient to enable it to determine the questions raised thereby, the Court may refer the case back to the Revenue-authority by which it was stated, to make such additions thereto or alterations therein as the Court may direct in that behalf.

[S. 48, Act I of 1879.]

Procedure in disposing of reference.

59.(*1*) The High Court or Chief Court, upon the hearing of any such case, shall decide the questions raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded.

The Indian Stamp Bill.

(Chapter VI.—Reference and Revision.—Sections 60-61. (Chapter VII.—Criminal Offences and Procedure.—Sections 62-63.)

(2) *The Court* shall send to the Revenue-authority by which the case was stated a copy of such judgment under the seal of the Court and the signature of the Registrar; and the Revenue-authority shall, on receiving such copy, dispose of the case conformably to such judgment.

[S. 49, Act I of 1879.]

Reference by other Courts to High Court.

60. (1) If any Court other than a Court mentioned in section *57* feels doubt as to the amount of duty to be paid in respect of any instrument under proviso (*a*) to section *35*, the Judge may draw up a statement of the case and refer it, with his own opinion thereon, for the decision of the High Court or Chief Court to which, if he were the Chief Controlling Revenue-authority, he would, under section *57*, refer the same.

(2) Such Court shall deal with the case as if it had been referred under section *57*, and send a copy of its judgment under the seal of the Court and the signature of the Registrar to the *Chief Controlling Revenue-authority and another like copy to the* Judge making the reference, who shall, on receiving such copy, dispose of the case conformably to such judgment.

(3) References made under *sub*-section (1), when made by a Court subordinate to a District Court, shall be made through the District Court, and, when made by any subordinate Revenue Court, shall be made through the Court immediately superior.

[S. 50, Act I of 1879.]

Revision of certain decisions of Courts regarding the sufficiency of stamps.

61. (1) When any Court in the exercise of its civil or revenue jurisdiction *or any Criminal Court in any proceeding under Chapter XII or Chapter XXXVI of the Code of Criminal Procedure, 1882*, makes any order admitting any instrument in evidence as duly stamped or as not requiring a stamp, or upon payment of duty and a penalty under section *35*, the Court to which appeals lie from, or references are made by, such first-mentioned Court may, of its own motion or on the application of the Collector, take such order into consideration.

X of 1882

(2) *If such Court, after such consideration*, is of opinion that such instrument should not have been admitted in evidence without the payment of duty and penalty under section *35*, or without the payment of a higher duty and penalty than those paid, *it* may record a declaration to that effect, and determine the amount of duty with which such instrument is chargeable, and may require any person in whose possession or power such instrument then is, to produce the same, and may impound the same when produced.

(3) When any declaration has been recorded under *sub-section (2)*, the Court recording the same shall send a copy thereof to the Collector, and, where the instrument to which it relates has been impounded or is otherwise in the possession of such Court, shall also send him such instrument.

(4) The Collector may thereupon, notwithstanding anything contained in the order admitting such instrument in evidence, or in any certificate granted under section *42*, or in section *43*, prosecute any person for any offence against the Stamp-law which the Collector considers him to have committed in respect of such instrument:

Provided that—

(*a*) no such prosecution shall be instituted where the amount (including duty and penalty) which, according to the determination of such Court, was payable in respect of the instrument under section *35* is paid to the Collector unless he thinks that the offence was committed with an intention of evading payment of the proper duty:

(*b*) except for the purposes of such prosecution, no declaration made under this section shall affect the validity of any order admitting any instrument in evidence, or of any certificate granted under section *42*.

CHAPTER VII.

CRIMINAL OFFENCES AND PROCEDURE.

[S. 61, Act I of 1879.]

Penalty for executing, etc., instrument not duly stamped.

62 (1) (*a*). Any person drawing, making, issuing, endorsing or transferring, or signing otherwise than as a witness, or presenting for acceptance or payment, or accepting, paying or receiving payment of, or in any manner negotiating, any bill of exchange, cheque or promissory note without the same being duly stamped,

(*b*) any person executing or signing otherwise than as a witness any other instrument chargeable with duty without the same being duly stamped, and

(*c*) any person voting or attempting to vote under any proxy not duly stamped,

shall for every such offence be punish*able* with fine which may extend to five hundred rupees:

Provided that, when any penalty has been paid in respect of any instrument under section *35*, section *40* or section *61*, the amount of such penalty shall be allowed in reduction of the fine (if any) subsequently imposed under this section in respect of the same instrument upon the person who paid such penalty.

[S. 75 (para 2), Act VI, 1882.]

(2) If a share-warrant is issued without being duly stamped, the company issuing the same, and also every person who, at the time when it is issued, is the managing director or secretary or other principal officer of the company, shall *be punishable with fine which may extend to five hundred rupees.*

[S. 62, Act I of 1879.]

Penalty for failure to cancel adhesive stamp.

63. Any person required by section *12* to cancel an adhesive stamp, and failing to cancel such stamp in manner prescribed by that section, shall be punishable with fine which may extend to one hundred rupees.

The Indian Stamp Bill.

(Chapter VII.—Criminal Offences and Procedure.—Sections 64-72.
Chapter VIII.—Supplemental Provisions.—Section 73.)

["of any duty" omitted.] [S. 63, Act I of 1879.]

Penalty for omission to comply with provisions of section 27.

64. Any person who, with intent to defraud the Government,—

(*a*) executes any instrument in which all the facts and circumstances required by section 27 to be set forth in such instrument are not fully and truly set forth, or,

(*b*) being employed or concerned in or about the preparation of any instrument, neglects or omits fully and truly to set forth therein all such facts and circumstances, *or*

(*c*) *does any other act calculated to deprive the Government of any duty or penalty under this Act*

shall be punish*able* with fine which may extend to five thousand rupees.

[S. 64, Act I of 1879.]

65. Any person who,

(*a*) being required under section 30 to give a receipt, refuses or neglects to give the same, or

Penalty for refusal to give receipt, and for devices to evade duty on receipts.

(*b*) with intent to defraud the Government of any duty, upon a payment of money or delivery of property exceeding twenty rupees in amount or value, gives a receipt for an amount or value not exceeding twenty rupees, or separates or divides the money or property paid or delivered,

shall be punish*able* with fine which may extend to one hundred rupees.

[S. 65, Act I of 1879.]

66. Every person who—

(*a*) receives, or takes credit for, any premium or consideration for any contract of insurance, and does not, within one month after receiving, or taking credit for, such premium or consideration, make out and execute a duly stamped policy of such insurance, or

Penalty for not making out policy or making one not duly stamped.

(*b*) makes, executes or delivers out any policy which is not duly stamped, or pays or allows in account, or agrees to pay or allow in account, any money upon, or in respect of, any such policy,

shall be punish*able* with fine which may extend to two hundred rupees.

[S. 66, Act I of 1879.]

67. Any person drawing or executing a bill of exchange or a policy of marine insurance purporting to be drawn or executed in a set of two or more, and not at the same time drawing or executing on paper duly stamped the whole number of bills or policies of which such bill or policy purports the set to consist, shall be punish*able* with fine which may extend to one thousand rupees.

Penalty for not drawing full number of bills or marine policies purporting to be in sets.

[S. 67, Act I of 1879.]

68. (*a*) Whoever, with intent to defraud the Government of duty, draws, makes or issues any bill of exchange or promissory note bearing a date subsequent to that on which such bill or note is actually drawn or made, and

Penalty for post-dating bills, etc.;

(*b*) whoever, knowing that such bill or note has been so post-dated, endorses, transfers, presents for acceptance or payment, or accepts, pays or receives payment of, such bill or note, or in any manner negotiates the same, and

(*c*) whoever, with the like intent, practises or is concerned in any act, contrivance or device not specially provided for by this Act or any other law for the time being in force,

for other devices to defraud the revenue.

shall be punish*able* with fine which may extend to one thousand rupees.

[S. 68, Act I of 1879.]

69. (*a*) Any person appointed to sell stamps who disobeys any rule made under section 74, and

Penalty for breach of rule relating to sale of stamps and for unauthorized sale.

(*b*) any person not so appointed who sells or offers for sale any stamp, (*other than a one anna adhesive stamp*)

shall be punish*able* with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

[S. 69, Act I of 1879.]

Institution and conduct of prosecutions.

70. (*1*) No prosecution in respect of any offence punishable under this Act, or any Act *hereby* repealed, shall be instituted without the sanction of the Collector or such other officer as the Local Government generally, or the Collector specially, authorizes in that behalf.

(*2*) The Chief Controlling Revenue-authority, or any officer authorized by it in this behalf, may stay any such prosecution or compound any such offence.

[S. 70, Act I of 1879.]

Jurisdiction of Magistrates.

71. No Magistrate other than a Presidency Magistrate and a Magistrate whose powers are not less than those of a Magistrate of the second class shall try any offence under this Act.

[S. 71, Act I of 1879.]

Place of trial.

72. Every such offence committed in respect of any instrument may be tried in any district or presidency-town in which such instrument is found, as well as in any district or presidency-town in which such offence might be tried under the *Code of* Criminal Procedure for the time being in force.

X of 1882. [Old s. 72—omitted. See Act X of 1897, s. 26.]

CHAPTER VIII.

SUPPLEMENTAL PROVISIONS.

[54 and 55 Vict., c. 39, s. 16.]

Books, &c., to be open to inspection.

73. *Every public officer having in his custody any registers, books, records, papers, documents, or proceedings, the inspection whereof may tend to secure any duty, or*

The Indian Stamp Bill.

(Chapter VIII.—Supplemental Provisions.—Sections 74-79.)

to prove or lead to the discovery of any fraud or omission in relation to any duty, shall at all reasonable times permit any person thereto authorized by the Collector to inspect the registers, books, papers, documents, and proceedings, and to take such notes and extracts as he may deem necessary, without fee or charge.

[S. 55, Act I of 1879.]

74. The Local Government, subject to the control of the Governor General in Council, may make rules for regulating

Powers to make rules relating to sale of stamps.

[" Consistent herewith " after " rules" omitted.]

(*a*) the supply and sale of stamps and stamped papers,

(*b*) the persons by whom alone such sale is to be conducted, and

(*c*) the duties and remuneration of such persons:

Provided that such rules shall not restrict the sale of one anna adhesive stamps.

[" Consistent herewith " after " rules" omitted.]
[S. 56, Act of 1879.]

75. The Governor General in Council may make rules to carry out generally the purposes of this Act *and may by such rules prescribe the penalties to be incurred on breach thereof.*

Power to make rules generally to carry out Act.

76. (*1*) All rules made under this Act, other than rules made under section *74*, shall be published in the Gazette of India, and all rules made under section *74* shall be published in the local Gazette.

Publication of rules.

[Om. s. 57, (para. 1)—*Omitted, see Act X of 1897, ss. 14 and 21.*]

(*2*) All rules published as required by this section shall, upon such publication, have *effect as if enacted by this Act.*

[S. 57, para. 2, Act of 1879.]

77. Nothing *in this Act* contained shall be deemed to affect the duties chargeable under any enactment for the time being in force relating to court-fees.

Saving as to court-fees.

[S. 59, Act I of 1879.]

VII of 1870.

78. Every Local Government shall *make provision for the sale of translations of* this Act in the principal vernacular languages of the territories administered by it at a price not exceeding four annas per copy.

Act to be translated, and sold cheaply.

[S. 60, Act I of 1879.]
[" A full alphabetical Index shall be added to every such translation, &c."—omitted.]

79. *The Acts mentioned in Schedule II are repealed to the extent specified in the fourth column thereof.*

Repeal.

The Indian Stamp Bill.

(*Schedule I.—Stamp-duty on Instruments.*)

SCHEDULE I.

STAMP-DUTY ON INSTRUMENTS.

(*See section 3.*)

	DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.	
[Art. 1, Sch. I.]	1. **ACKNOWLEDGMENT** of a debt exceeding twenty rupees in amount or value, written or signed by, or on behalf of, a debtor in order to supply evidence of such debt in any book (other than a banker's pass-book) or on a separate piece of paper when such book or paper is left in the creditor's possession;		
	(*a*) *if unattested by any witness*	One anna.	
	(*b*) *if attested by any witness*	*The same duty as a Bond (No. 15) for such amount or value.*	
[Art. 2, Sch. I.]	2. **ADMINISTRATION-BOND** including a bond given under section 256 of the Indian Succession Act, 1865; section 6 of the Government Savings Banks Act, 1873; section 78 of the Probate and Administration Act, 1881 or section 9 or section 10 of the Succession Certificate Act, 1889;		X of 1865. V of 1873. V of 1881. VII of 1889.
	(*a*) *where the amount does not exceed Rs. 1,000*	*The same duty as a Bond (No. 15) for such amount.*	
	(*b*) *in any other case*	*Five rupees.*	
[Art. 38, Sch. I.]	3. **ADOPTION-DEED**, *that is to say, any* instrument (other than a will) *recording an adoption or* conferring or purporting to confer an authority to adopt	Ten rupees.	
	ADVOCATE. *See* ENTRY AS AN ADVOCATE (*No. 30.*)		
[Art. 3, Sch. I, and s. 3 (3) Act X, 1897.]	4. **AFFIDAVIT**, *including an* affirmation *or declaration in the case of persons by law allowed to affirm or declare instead of swearing*	One rupee.	
	Exemptions.		
[Art. 1, Sch. II.]	Affidavit or declaration in writing when made—		
	(*a*) as a condition of enlistment under the Indian Articles of War, *1869*;		V of 1869.
	(*b*) for the immediate purpose of being filed or used in any Court or before the officer of any Court; or		
	(*c*) for the sole purpose of enabling any person to receive any pension or charitable allowance.		
[Art. 5, Sch. I.]	5. **AGREEMENT OR MEMORANDUM OF AN AGREEMENT**—		
	(*a*) If relating to the sale of a Government security, or share in an *incorporated* Company or *other body corporate* or a Bill of Exchange	One anna.	
	(*b*) If not otherwise provided for	Eight annas.	[Old cl. (*b*) —omitted.]
	Exemptions.		
[Art. 2, Sch. II.]	Agreement or memorandum of agreement— (*a*) for or relating to the sale of goods or merchandize exclusively, not being a NOTE OR MEMORANDUM chargeable under No. 43.		
	(*b*) made in the form of tenders to the Government of India for or relating to any loan;		[Old cl. (*c*) —omitted.]
	(*c*) made under the European Vagrancy Act, 1874, section 17.		IX of 1874.
	AGREEMENT TO LEASE. *See* LEASE (*No. 35.*)		
[Art. 29, Sch. I.]	6. **AGREEMENT TO MORTGAGE**, *including an* EQUITABLE MORTGAGE *or any instrument* evidencing an agreement to secure the repayment of a loan made upon the deposit of title-deeds or other valuable security, or upon the hypothecation of moveable property—		
	for every sum secured not exceeding Rs. 1,000	*One rupee.*	

The Indian Stamp Bill.

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*continued.*

	DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.	
	and for every Rs. 1,000 or part thereof secured in excess of Rs. 1,000	*One rupee.*	
	Exemption.		
	See Exemptions under MORTGAGE-DEED *(No. 40).*		
[Art. 6, Sch. I.]	7. **APPOINTMENT IN EXECUTION OF A POWER**, whether of trustees or of property, moveable or immoveable, where made by any writing not being a Will	Fifteen rupees.	
[Art. 7, Sch. I.]	8. **APPRAISEMENT OR VALUATION** made otherwise than under an order of the Court in the course of a suit;		
	(*a*) *where the amount does not exceed Rs. 1,000*	The same duty as a *Bond* (No. 15) *for such amount.*	
	(*b*) *in any other case*	Five rupees.	
	Exemptions.		
[Art 3, Sch. II.]	(*a*) Appraisement or valuation made for the information of one party only, and not being in any manner obligatory between parties either by agreement or operation of law.		
[Art. 4, Sch. II.]	(*b*) Appraisement of crops for the purpose of ascertaining the amount to be given to a landlord as rent.		
[Art. 31, Sch. I.]	9. **APPRENTICESHIP-DEED**, including every writing relating to the service or tuition of any apprentice, clerk or servant, placed with any master to learn any profession, trade or employment, *not being* ARTICLES OF CLERKSHIP *(No. 11)*	Five rupees.	
	Exemption.		
[Art. 12 (*c*), Sch. II.]	Instruments of apprenticeship executed by a Magistrate under *the Apprentices Act* Act, 1850 or by which a person is apprenticed by or at the charge of any public charity.		XIX of 1850.
[Art. 8, Sch. I.]	10. **ARTICLES OF ASSOCIATION OF A COMPANY** ...	Twenty-five rupees.	
[Art. 11, Sch. II, Notn. No. 5199-S. R., dated 1st November 1895.]	*Exemption.*		
	Articles of any Association not formed for profit and registered under section 26 of the Indian Companies Act, 1882.		*VI of 1882.*
	See also MEMORANDUM OF ASSOCIATION OF A COMPANY *(No. 39).*		
[Art. 9, Sch. I.]	11. **ARTICLES OF CLERKSHIP** or contract whereby any person first becomes bound to serve as a clerk in order to his admission as an attorney in any High Court	Two hundred and fifty rupees.	
	ASSIGNMENT. See CONVEYANCE, *(No. 23)*, TRANSFER *(No. 62) and* TRANSFER OF LEASE *(No. 63) as the case may be.*		
	ATTORNEY. *See* ENTRY AS AN ATTORNEY *(No. 30) and* POWER-OF-ATTORNEY *(No. 48).*		
	AUTHORITY TO ADOPT. See ADOPTION-DEED *(No. 3.)*		
[Art. 10, Sch. I.]	12. **AWARD**, that is to say, any decision in writing by an arbitrator or umpire on a reference made otherwise than by an order of the Court in the course of a suit—		
	(*a*) where the amount or value of the property to which the award relates as set forth in such award does not exceed Rs. 1,000.	The same duty as a Bond (No. 15) for such amount.	
	(*b*) in any other case	Five rupees.	
	Exemption.		
[Art. 6, Sch. II.]	Award under Bombay *District Municipal* Act, 1873, section 81 or Bombay Hereditary Offices Act, 1874, section 18.		Bom. Act VI of 1873. Bom. Act III of 1874.
[Art. 11, Sch. I.]	13. **BILL OF EXCHANGE** [*as defined by s. 2 (2) & (3)*], not being a BOND, bank-note or currency-note—		
	(*a*) *where* payable on demand	One anna.	["And the amount exceeds Rs. 20," omitted.]

The Indian Stamp Bill.

(*Schedule I.—Stamp-duty on Instruments.*)

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.		
	If drawn singly.	If drawn in set of two, for each part of the set.	If drawn in set of three, for each part of the set.
	Rs. A. P.	Rs. A. P.	Rs. A. P.
(*b*) *where* payable otherwise than on demand, but not more than one year after date or sight—			
if the amount of the bill or note does not exceed Rs. 200	0 2 0	0 1 0	0 1 0
if it exceeds Rs. 200 and does not exceed ... 400	0 4 0	0 2 0	0 2 0
Ditto 400 Ditto 600	0 6 0	0 3 0	0 2 0
Ditto 600 Ditto 1,000	0 10 0	0 5 0	0 4 0
Ditto 1,000 Ditto 1,200	0 12 0	0 6 0	0 4 0
Ditto 1,200 Ditto 1,600	1 0 0	0 8 0	0 6 0
Ditto 1,600 Ditto 2,500	1 8 0	0 12 0	0 8 0
Ditto 2,500 *Ditto* 5,000	3 0 0	1 8 0	1 0 0
Ditto 5,000 *Ditto* 7,500	4 8 0	2 4 0	1 8 0
Ditto 7,500 *Ditto* 10,000	6 0 0	3 0 0	2 0 0
Ditto 10,000 *Ditto* 15,000	9 0 0	4 8 0	3 0 0
Ditto 15,000 *Ditto* 20,000	12 0 0	6 0 0	4 0 0
Ditto 20,000 *Ditto* 25,000	15 0 0	7 8 0	5 0 0
Ditto 25,000 *Ditto* 30,000	18 0 0	9 0 0	6 0 0
and for every additional Rs. 10,000 or part thereof in excess of Rs. 30,000	6 0 0	3 0 0	2 0 0
(*c*) *where* payable at more than one year after date or sight ...	The same duty as a Bond (No. 15) for the same amount.		
[Art. 12, Sch. I.] 14. **BILL OF LADING** (*including a through bill of lading*) ...	Four annas.		
N. B.—If a Bill of Lading is drawn in parts, the proper stamp therefor must be borne by each one of the set.			
Exemption.			
[Art. 7, Sch. II.] (*a*) Bill of lading when the goods therein described are received at a place within the limits of any port as defined under the Indian Ports Act, 1889 and are to be delivered at another place within the limits of the same port.			
[Art. 3, Sch. II, Notfn. No. 5199, dated 1st November 1895.] (*b*) *Bill of lading when executed out of British India and relating to property to be delivered in British India.*			
[Art. 13, Sch. I.] 15. **BOND** [*as defined by section 2 (5)*] not *being a* DEBENTURE (*No. 27*) *and not being* otherwise provided for by this Act, or by the Court-fees Act, 1870—			
where the amount or value secured does not exceed Rs. 10	Two annas.		
where it exceeds Rs. 10 and does not exceed Rs. 50	*Four annas.*		
Ditto 50 *Ditto* 100	*Eight annas.*		
Ditto 100 *Ditto* 200	*One rupee.*		
Ditto 200 *Ditto* 300	*One rupee eight annas.*		
Ditto 300 *Ditto* 400	*Two rupees.*		
Ditto 400 *Ditto* 500	*Two rupees eight annas.*		
Ditto 500 *Ditto* 600	*Three rupees.*		
Ditto 600 *Ditto* 700	*Three rupees eight annas.*		
Ditto 700 *Ditto* 800	*Four rupees.*		

[Old Art. 14—see Art. 57 below.]

X of 1889.

[VII of 1870.]

The Indian Stamp Bill.

(*Schedule I—Stamp-duty on Instruments.*)

SCHEDULE I—*continued.*

	DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.	
	where it exceeds Rs. 800 *and does not exceed Rs.* 900	*Four rupees eight annas.*	
	Ditto 900 *Ditto* 1,000	*Five rupees.*	
	and for every Rs. 500 or part thereof in excess of Rs. 1,000 ...	Two rupees eight annas.	
	See ADMINISTRATION BOND (*No. 2*), BOTTOMRY BOND (*No. 16*) CUSTOMS BOND (*No. 26*), INDEMNITY BOND (*No. 34*), RESPONDENTIA BOND (*No. 56*), SECURITY BOND (*No. 57*).		
	Exemptions to 15.		
[Art. 8, (*b*) & (*c*) Sch. II.]	Bond, when executed by—		
	(*a*) headmen nominated under rules framed in accordance with the Bengal *Irrigation* Act, 1876, section 99, for the due performance of their duties under that Act;		[Old cl. (*a*) —omitted.] Beng. Act III of 1876.
	(*b*) any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem.		
[Art. 15, Sch. I.]	16. **BOTTOMRY-BOND**, that is to say, any instrument whereby the master of a sea-going ship borrows money on the security of the ship to enable him to preserve the ship or prosecute her voyage ...	The same duty as a Bond (No. 15) *for the same amount.*	
[New.]	17. **CANCELLATION**,—*Instrument of, (including any instrument by which any instrument previously executed is cancelled) if attested and not otherwise provided for*	*Five rupees.*	
	See also RELEASE (*No. 55*); REVOCATION OF SETTLEMENT (*No. 58*); SURRENDER (*No. 61*); REVOCATION OF TRUST (*No. 64*.)		
[Art. 16, Sch. I.]	18. **CERTIFICATE OF SALE** granted to the purchaser of any property sold by public auction by a Civil or Revenue Court, or Collector or other Revenue-officer—		
	(*a*) *where the value of the property sold does not exceed Rs 10* ...	*Two annas.*	
	(*b*) *ditto ditto exceeds Rs. 10 but does not exceed Rs. 25*	*Four annas.*	
	(*c*) *in any other case*	The same duty as a Conveyance (No. 23) for a consideration equal to the amount of the purchase-money only.	
[Art. 17, Sch. I.]	19. **CERTIFICATE OR OTHER DOCUMENT** evidencing the right or title of the holder thereof, or any other person, either to any shares, scrip or stock in or of any *incorporated* Company or *other body corporate*, or to become proprietor of shares, scrip or stock in or of any *such* Company or *body*	One anna.	
	SEE ALSO LETTER OF ALLOTMENT (*No. 36*).		
[Art. 18, Sch. I.]	20. **CHARTER-PARTY**, that is to say, any instrument (except an agreement for the hire of a tug-steamer) whereby a vessel or some specified principal part thereof is let for the specified purposes of the charterer *whether it includes a penalty clause or not* ...	One rupee.	[For an amount exceeding twenty-rupees—omitted.]
[Art. 19, Sch. I.]	21. **CHEQUE** [*as defined by section 2 (7)*]	One anna.	
[Art. 20, Sch. I.]	22. **COMPOSITION-DEED**, that is to say, any instrument executed by a debtor whereby he conveys his property for the benefit of his creditors, or whereby payment of a composition or dividend on their debts is secured to the creditors, or whereby provision is made for the continuance of the debtor's business, under the supervision of inspectors or under letters of license, for the benefit of his creditors	Ten rupees.	
[Art. 21, Sch. I.]	23. **CONVEYANCE** [*as defined by section 2 (10)*], not being TRANSFER *charged or exempted under* No. 62—		
	where the amount *or value* of the consideration for such conveyance as set forth therein does not exceed Rs. 50	Eight annas.	

The Indian Stamp Bill.

(*Schedule I.—Stamp-duty on Instruments.*)

SCHEDULE I—*continued.*

	Description of Instrument.	Proper Stamp-duty.
	where it exceeds Rs. 50 but does not exceed Rupees 100 ...	One rupee.
	" *Ditto* 100 *Ditto* 200 ...	Two rupees.
	Ditto 200 *Ditto* 300 ...	Three rupees.
	Ditto 300 *Ditto* 400 ...	Four rupees.
	Ditto 400 *Ditto* 500 ...	Five rupees.
	Ditto 500 *Ditto* 600 ...	Six rupees.
	Ditto 600 *Ditto* 700 ...	Seven rupees.
	Ditto 700 *Ditto* 800 ...	Eight rupees.
	Ditto 800 *Ditto* 900 ...	Nine rupees.
	Ditto 900 *Ditto* 1,000 ...	Ten rupees.
	and for every Rs. 500 or part thereof in excess of Rs. 1,000 ...	Five rupees.
	Exemption.	
[Art. 5, Sch. II.]	Assignment of copyright by entry made under the Indian Copyright Act, 1847, section 5.	XX of 1847.
	CO-PARTNERSHIP—DEED. *See* PARTNERSHIP (*No. 46.*)	
[Art. 22, Sch. I.]	**24. COPY OR EXTRACT—**	
	(*a*) certified to be a true copy or extract, by or by order of any public officer and not chargeable under the law for the time being in force relating to court-fees—	VII of 1870.
	(*i*) if the original was not chargeable with duty or if the duty with which it was chargeable does not exceed one rupee	Eight annas.
	(*ii*) in any other case	One rupee.
	(*b*) *of a receipt, when signed or attested by the person required by law to give the receipt*	*One anna.*
	Exemptions.	
[Art. 9, Sch. II.]	(*a*) Copy of any paper which a public officer is expressly required by law to make or furnish for record in any public office or for any public purpose.	
[Art. 6 (*b*) & (*c*), Sch. II, Notification No. 5199-S. R., dated 1st November 1895.]	(*b*) *copies of entries—*	
	(*i*) *in the certified copies of registers, given under the Births, Deaths and Marriages Registration Act, 1886, section 8;*	VI of 1886.
	(*ii*) *in register books, granted by any Registrar of Births and Deaths under the said Act, section 25, or*	
	(*iii*) *in registers and records, given under the said Act, section 35, when applied for by a soldier, sailor, non-commissioned officer or petty officer:*	
	(*c*) *copies of, or extracts from, baptismal, marriage or burial registers certified by Government Chaplains, subsidised or unsubsidised Clergymen, and Diocesan or Marriage Registrars, and granted to soldiers, sailors or non-commissioned or petty officers.*	
[Art. 23, Sch. I.]	**25. COUNTERPART OR DUPLICATE** of any instrument chargeable with duty and in respect of which the proper duty has been paid—	
	(*a*) if the duty with which the original instrument is chargeable does not exceed one rupee.	The same duty as is payable on the original.
	(*b*) in any other case	One rupee.

The Indian Stamp Bill.

(*Schedule I.—Stamp-duty on Instruments.*)

SCHEDULE I—*continued.*

	DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
	Exemption.	
[Art. 13 Sch. II (c).]	Counterpart of any lease granted to a cultivator.	
[Art. 24, Sch. I.]	26. **CUSTOMS-BOND.**	
	(*a*) *where the amount does not exceed Rs. 1,000*	The same duty as a *Bond* (*No. 15*) *for such amount.*
	(*b*) *in any other case*	*Five rupees.*
[New.]	27. **DEBENTURE,** (*whether a mortgage debenture or not*) *being a marketable security transferable by delivery, or by endorsement or by separate instrument of transfer.*	*The same duty as a Bond* (*No. 15*) *for the same amount.*
	EXPLANATION.—The term Debenture includes any interest-coupons attached thereto.	
	Exemption.	
	A Debenture issued by an incorporated Company or other body corporate in terms of a registered Mortgage-Deed, duly stamped in respect of the full amount of debentures to be issued thereunder whereby the company or body borrowing makes over in whole or in part, their property to Trustees for the benefit of the Debenture-holders: provided that the debentures so issued are expressed to be issued in terms of the said mortgage-deed.	
	See also BOND (*No. 15*) ; *and* SECTION 8.	
	DECLARATION OF ANY TRUST—*See* TRUST. (*No. 64.*)	
[Art. 26, Sch. I.]	28. **DELIVERY-ORDER IN RESPECT OF GOODS,** that is to say, any instrument entitling any person therein named, or his assigns, or the holder thereof, to the delivery of any goods lying in any dock or port, or in any warehouse in which goods are stored or deposited on rent or hire, or upon any wharf, such instrument being signed by or on behalf of the owner of such goods, upon the sale or transfer of the property therein, when such goods exceed in value twenty rupees	One anna.
	DEPOSIT OF TITLE-DEEDS—See AGREEMENT TO MORTGAGE (*No. 6.*)	
	DISSOLUTION OF PARTNERSHIP.—*See* PARTNERSHIP (*No. 46.*)	
[Art. 34, Sch. I.]	29. **DIVORCE.**—Instrument of, that is to say, any instrument by which any person effects the dissolution of his marriage	One rupee.
	DOWER.—*Instrument of. See* SETTLEMENT (*No. 58.*)	
	DUPLICATE. See COUNTERPART (*No. 25*).	
[Art. 27, Sch. I.]	30. **ENTRY AS AN ADVOCATE, VAKIL OR ATTORNEY ON THE ROLL OF ANY HIGH COURT** in exercise of powers conferred on such Court by letters patent or by the Legal Practitioners Act, 1884—	IX of 1884.
	(*a*) in the case of an Advocate or Vakil	Five hundred rupees.
	(*b*) in the case of an Attorney	Two hundred and fifty rupees.
	Exemption.	
[Art. 11 (a), Sch. II.]	Entry of an advocate, vakil or attorney on the roll of any High Court when he has previously been enrolled in a High Court.	
	EQUITABLE MORTGAGE. *See* AGREEMENT TO MORTGAGE (*No. 6*).	
[Art. 35, Sch. I.]	31. **EXCHANGE OF PROPERTY.**—Instrument of, ...	The same duty as a Conveyance (No. 23) for a consideration equal to the value of the property of greatest value as set forth in such instrument.

The Indian Stamp Bill.

(*Schedule I.—Stamp-duty on Instruments.*)

SCHEDULE I—*continued.*

	DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
	EXTRACT. See COPY (*No. 24*).	
[Art. 30, Sch. I.]	32. **FURTHER CHARGE**—Instrument of, *that is to say, any instrument, i.e.*, imposing *further charge* on mortgaged property—	
	(*a*) when the original mortgage, is one of the description referred to in clause (*a*) *of article 40* (*that is, with possession*).	The same duty as a Conveyance (No. 23) for a consideration equal to the amount secured by such instrument.
	(*b*) when such mortgage is one of the description referred to in clause (*b*) *of article 40* (*that is, without possession*)—	
	(i) *if at the time of execution of the instrument of further charge possession of the property is given, or agreed to be given under such instrument.*	*The same duty as a Conveyance (No. 23) for a consideration equal to the total amount of the charge (including the original mortgage and any further charge) less the duty already paid on such original mortgage and further charge.*
	(ii) *if possession is not so given*	The same duty as a Bond (No. 15) for the amount secured by such instrument.
[Art. 36, Sch. I.]	33. **GIFT**—Instrument of, *not being* a SETTLEMENT OR WILL *or* TRANSFER *of shares.*	The same duty as a Conveyance (No. 23) for a consideration equal to the value of the property as set forth in such instrument.
[Art. 28, Sch. I.]	34. **INDEMNITY-BOND**	The same duty as a Security Bond (No. 57) *for the same amount.*
	INSPECTORSHIP-DEED. See COMPOSITION DEED, (*No. 22*).	
	INSURANCE. See POLICY OF INSURANCE (*No. 47.*)	
[Arts. 4 and 39, Sch. I.]	35. **LEASE** including an under-lease or sub-lease *and any agreement to let or sub-let*—	
	(*a*) Where by such lease the rent is fixed and no premium is paid or delivered—	
	(*i*) *where the* lease purports to be for a term of less than one year.	The same duty as a Bond (No. 15) for the whole amount payable or deliverable under such lease.
	(*ii*) *where the* lease purports to be for a term of not less than one year but not more than three years.	The same duty as a Bond (No. 15) for the average annual rent reserved.
	(*iii*) *where the* lease purports to be for a term *in excess* of three years.	The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of the average annual rent reserved.
	(*iv*) *where the* lease does not purport to be for any definite term.	The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of the average annual rent which would be paid or delivered for the first ten years if the lease continued so long.
	(*v*) *where the lease purports to be in perpetuity.*	*The same duty as a Conveyance (No. 23) for a consideration equal to one-fifth of the whole amount of rents which would be paid or delivered in respect of the first fifty years of the lease.*

The Indian Stamp Bill.

(*Schedule I.—Stamp-duty on Instruments.*)

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.	
(*b*) where the lease is granted for a fine or premium, and where no rent is reserved.	The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium as set forth in the lease.	
(*c*) where the lease is granted for a fine or premium in addition to rent reserved.	The same duty as a Conveyance (No. 23) for a consideration equal to the amount or value of such fine or premium as set forth in the lease, in addition to the duty which would have been payable on such lease if no fine or premium had been paid or delivered.	
Provided that, when an agreement to lease is stamped with the *ad valorem* stamp required for a lease, and a lease in pursuance of such agreement is subsequently executed, the duty on such lease shall not exceed eight annas		
Exemptions.		
[Art. 13, Sch. I.] (*a*) Lease, executed in the case of a cultivator *and for the purposes of cultivation* (*including a lease of trees for the production of food or drink*) without the payment or delivery of any fine or premium, when a definite term is expressed and such term does not exceed one year, or when the average annual rent reserved does not exceed one hundred rupees;		[Old (*c*) transferred to No. 23]. VII of 1875. II of 1889.
(*b*) Leases of fisheries granted under the Burma Fisheries Act, 1875 *or the Upper Burma Land and Revenue Regulation, 1889.*		
[Art. 40, Sch. I.] 36. **LETTER OF ALLOTMENT OF SHARES** in any Company or proposed Company, or in respect of any loan to be raised by any Company or proposed Company	One anna.	
See also CERTIFICATE OR OTHER DOCUMENT (*No. 19.*)		
[Art. 41, Sch. I.] 37. **LETTER OF CREDIT**, that is to say, any instrument by which one person authorizes another to give credit to the person in whose favour it is drawn	One anna.	
[Art. 42, Sch. I.] 38. **LETTER OF LICENSE**, that is to say, any agreement between a debtor and his creditors that the latter shall, for a specified time, suspend their claims and allow the debtor to carry on business at his own discretion	Ten rupees.	
[Art. 43, Sch. I.] 39. **MEMORANDUM OF ASSOCIATION OF A COMPANY—**		
(*a*) *if accompanied by Articles of Association under section 37 of the Indian Companies Act, 1882*	Fifteen rupees.	VI of 1882.
(*b*) *if not so accompanied*	*Forty rupees.*	
Exemption.		
[Art. 11, Sch. II, Notfn. No. 5195-S. R., dated 1st November 1895.] *Memorandum of any Association not formed for profit and registered under Section 26 of the Indian Company's Act, 1882.*		VI of 1882.
[Art. 44, Sch. I.] 40. **MORTGAGE-DEED** not being an AGREEMENT TO MORTGAGE (*No. 6*), BOTTOMRY BOND (No. 16), MORTGAGE OF A CROP (*No. 41*), RESPONDENTIA BOND (*No. 56*), or SECURITY BOND (No. 58)—		
(*a*) when possession of the property or any part of the property comprised in such deed is given by the mortgagor or agreed to be given.	The same duty as a Conveyance (No. 23) for a consideration equal to the amount secured by such deed.	

The Indian Stamp Bill.

(*Schedule I.—Stamp-duty on Instruments.*)

SCHEDULE I—*continued.*

	DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
	(*b*) when at the time of execution possession is not given or agreed to be given as aforesaid.	The same duty as a Bond (No. 15) for the amount secured by such deed.
	EXPLANATION.—*A mortgagor who gives a power-of-attorney to collect rents or a lease of the property mortgaged or part thereof is deemed to give possession within the meaning of this article.*	
[54 and 55 Vict., c. 39.]	(*c*) *When a collateral or auxiliary or additional or substituted security, or by way of further assurance for the above mentioned purpose where the principal or primary security is duly stamped—*	
	for every sum secured not exceeding Rs. 1,000 ...	*Eight annas.*
	and for every Rs. 1,000 or part thereof secured in excess of Rs. 1,000	*Eight annas.*
	Exemptions.	
[Art. 12 (*a*), Sch. II.]	(*1*) Instruments, executed by persons taking advances under the Land Improvement Loans Act, 1883 or by their sureties as security for the repayment of such advances;	XIX of 1883.
[Art. 14 (*b*) Sch. II.]	(*2*) Letter of hypothecation accompanying a bill of exchange.	[Old cl. (*b*) omitted, Old cl. (*c*), see (No. 9).]
[Art. 8 (1) Sch. II of Notification No. 5189 S. R., dated 1st November 1895.]	(*3*) *Instrument of pledge or pawn of goods if unattested.*	
[Art. 3, Sch. I, Notification No. 5199 S. R., dated 1st November 1895.]	41. **MORTGAGE OF A CROP** *including any instrument evidencing an agreement to secure the repayment of a loan made upon any mortgage of a crop, whether the crop is, or is not in existance at the time of the mortgage—*	
	(*a*) *when the loan is repayable not more than three months from the date of the instrument—*	
	for every sum secured not exceeding Rs. 200	*One anna.*
	and for every Rs. 200 or part thereof secured in excess of Rs. 200	*One anna.*
	(*b*) *when the loan is repayable more than three months, but not more than one year, from the date of the instrument—*	
	for every sum secured not exceeding Rs. 100	*Four annas.*
	and for every Rs. 100 or part thereof secured in excess of Rs. 100	*Four annas.*
[Art. 45, Sch. I.]	42. **NOTARIAL ACT**, that is to say, any instrument, endorsement, note, attestation, certificate or entry *not being a* PROTEST (No. 50) made or signed by a Notary Public in the execution of the duties of his office, or by any other person lawfully acting as a Notary Public	One rupee.
	See also PROTEST OF BILL OR NOTE (*No. 50*).	
[Art. 46, Sch. I.]	43. **NOTE OR MEMORANDUM** sent by a Broker or Agent to his principal intimating the purchase or sale on account of such principal of any goods, stock or marketable security exceeding in value twenty rupees	One anna.
[Art. 47, Sch. I.]	44. **NOTE OF PROTEST BY THE MASTER OF A SHIP** ...	Eight annas.
	ORDER FOR THE PAYMENT OF MONEY—*See* BILL OF EXCHANGE (*No. 13*).	
[Art. 37, Sch. I.]	45. **PARTITION**—*Instrument of*, [*as defined by s. 2 (14)*]... ...	The same duty as a Bond (No. 15) for the amount of the value of the property divided as set forth in such instrument.

The Indian Stamp Bill.

(*Schedule I.—Stamp-duty on Instruments.*)

SCHEDULE I—*continued.*

	DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
[Art. 5, Sch. I Notification No. 5109 S. R., dated 1st November 1895.]	*Provided that where land is held on Revenue Settlement for a period not exceeding thirty years and paying the full assessment, the duty shall not exceed the amount chargeable on a valuation of the land at five times the annual revenue.* *See also* SECTION 29 (*k*).	
[Arts. 32 & 33, Sch. I.]	**46. PARTNERSHIP,**	
	A.—Instrument of—	
	(*b*) *where the capital of the partnership does not exceed Rs. 500*	*Two rupees eight annas.*
	(*c*) *In any other case*	Ten rupees.
	B.—Dissolution of, ...	*Five rupees.*
[Art. 49, Sch. I.]	**47. POLICY OF INSURANCE—**	
	A.—Sea-Insurance—	
	(1) for or upon any voyage—	
	(i) where the premium or consideration does not exceed the rate of two annas or one-eighth per centum of the amount insured by the policy	One anna.
	(ii) in any other case, in respect of every full sum of one thousand rupees and also any fractional part of one thousand rupees insured by the policy	Two annas.
	(2) for time—	
	(iii) in respect of every full sum of one thousand rupees and also any fractional part of one thousand rupees insured by the policy—	
	where the insurance shall be made for any time not exceeding six months...	Two annas.
	where the insurance shall be made for any time exceeding six months and not exceeding twelve months ...	Four annas.
	B.—Fire Insurance—	
	(1) in respect of an original policy—	
	for every sum insured not exceeding Rs. 1,000, and also for every Rs. 1,000 or part thereof insured in excess of Rs. 1,000 for a period—	
	(i) *not exceeding one month*	*Two annas.*
	(ii) *exceeding one month, but not exceeding three months*	*Three annas.*
	(iii) *exceeding three months, but not exceeding six months*	*Four annas.*
	(iv) *exceeding six months*	*Six annas.*
	(2) in respect of renewing, for the purpose of keeping in force, a policy which has been granted for six months or any shorter term and in respect of which and of the previous renewal whereof (if any) there has not already been paid the duty which would have been chargeable if the policy had originally been granted for a longer term than six months.	The same duty as would be payable in respect of an original policy for the amount and term to which the renewal extends; or the excess of the duty which would have been chargeable if the policy had originally been granted for a longer term than six months, over the duty already paid in respect of the policy and of the previous renewal thereof (if any), whichever is the smaller sum.

The Indian Stamp Bill.

(*Schedule I.—Stamp-duty on Instruments.*)

SCHEDULE I—*continued.*

	DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
[Art. 6, Sch. I, Notification No. 5199 S. R., dated 1st November 1895.]	**C—Railway Accident Insurance—**	
	in the case of insurance against railway accidents valid for a single journey only when issued to a passenger on any railway	*One anna.*
	Exemption.	
[Art. 12 (*b*), Sch. II, Notification No. 5199 S. R., dated 1st November 1895.]	*When issued to a passenger travelling by the intermediate or the third class in any railway no duty shall be payable.*	
	D—Life or other Insurance, except such a RE-INSURANCE as is described in Division *E* of this article—	
	for every sum insured not exceeding Rs. 1,000 and also for every Rs. 1,000 or part thereof insured in excess of Rs. 1,000—	
	(i) if drawn singly	Six annas.
	(ii) if drawn in duplicate, for each part	Three annas.
	Exemption.	
[Art. 12, Sch. II, Notification No. 5199 S. R., dated 1st November 1895.]	*Policies of life insurance granted by the Director General of the Post Office of India in accordance with rules for Postal Life Insurance issued under the authority of the Government of India.*	
	E—Re-insurance, by an Insurance Company, which has granted a POLICY OF SEA-INSURANCE or A POLICY OF FIRE-INSURANCE, with another Company by way of indemnity or guarantee against the payment on the original insurance of a certain part of the sum insured thereby	One rupee.
	General exemption.	
[Art. 14 (*a*), Sch. II.]	Letter of cover or engagement to issue a policy of insurance: Provided that, unless such letter or engagement bear the stamp prescribed by this Act for such policy, nothing shall be claimable thereunder, nor shall it be available for any purpose, except to compel the delivery of the policy therein mentioned.	
[Art. 50, Sch. I.]	**48. POWER-OF-ATTORNEY** [*as defined by s. 2 (20)*], not being a PROXY No. 52—	
	(*a*) when executed for the sole purpose of procuring the presentation of one or more documents for registration in relation to a single transaction *or for admitting execution of one or more such documents*...	Eight annas.
[Art. 7, Sch. I, Notification No. 5199 S. R., dated 1st November 1895.]	(*b*) *when required in suits or proceedings under the Presidency Small Cause Courts Act, 1882*	*Eight annas.* XV of 1882.
[Former (*b*).]	(*c*) when authorizing one person or more to act in a single transaction other than *the case* mentioned in *clause* (*a*) ...	One rupee.
[Former (*c*).]	(*d*) when authorizing not more than five persons to act jointly and severally in more than one transaction or generally...	Five rupees.
[Former (*d*).]	(*e*) when authorizing more than five but not more than ten persons to act jointly and severally in more than one transaction or generally	Ten rupees.
	(*f*) *when given for consideration and authorising the sale of any property.*	*The same duty as a Conveyance (No. 23) for the same amount.*
[Former (*e*).]	(*g*) in any other case	One rupee for each person authorized.

The Indian Stamp Bill.

(*Schedule I.—Stamp-duty on Instruments.*)

SCHEDULE I—*continued.*

	DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
	EXPLANATION.—For the purposes of this *article* more persons than one when belonging to the same firm shall be deemed to be one person.	
[New.]	49. **PROMISSORY NOTE**, [*as defined by section 2 (21)*]—	
	(*a*) *if expressed to be payable at more than one year after date* ...	*The same duty as a Bond (No. 15) for the same amount.*
	(*b*) *if not so expressed*	*The same duty as a Bill of exchange [No. 13 (b)] payable otherwise than on demand for the same amount.*
[Protest in Sch. I.]	50. **PROTEST OF BILL OR NOTE**, that is to say, any declaration in writing made by a Notary Public, or other person lawfully acting as such, attesting the dishonour of a bill of exchange or promissory note	*One rupee.*
[As in Sch. I.]	51. **PROTEST BY THE MASTER OF A SHIP**, that is to say, any declaration of the particulars of her voyage drawn up by him with a view to the adjustment of losses or the calculation of averages, and every declaration in writing made by him against the charterers or the consignees for not loading or unloading the ship, when such declaration is attested or certified by a Notary Public or other person lawfully acting as such	*One rupee.*
	See also NOTE OF PROTEST BY THE MASTER OF A SHIP (*No. 44*).	
[Art. 51, Sch. I.]	52. **PROXY** empowering any person to vote at any one meeting of (*a*) Members of an *incorporated* Company *or other body corporate* whose stock or funds is or are divided into shares and transferable, (*b*) *a Local authority, or* (*c*) Proprietors, Members, or Contributors to the funds, of any Institution	One anna.
[Art. 52, Sch. I.]	53. **RECEIPT** [*as defined by s. 2 (22)*] for any money or other property the amount or value of which exceeds twenty rupees ...	One anna.
	Exemptions.	
[Art 15, Sch. II.]	Receipt—	
	(*a*) endorsed on or contained in any instrument duly stamped, or exempted under *the proviso to s. 3* (*Instruments executed on behalf of Government*) acknowledging the receipt of the consideration-money therein expressed, or the receipt of any principal-money, interest or annuity or other periodical payment thereby secured;	
	(*b*) for any payment of money without consideration;	
	(*c*) for any payment of rent by a cultivator on account of land assessed to Government revenue, or (in the Presidencies of Fort St. George and Bombay) of inám lands;	
	(*d*) for pay, *or allowances* by non-commissioned officers or soldiers of Her Majesty's Army, or Her Majesty's Indian Army, when serving in such capacity, *or by mounted Police constables*;	
	(*e*) given by holders of family-certificates in cases where the person from whose pay or allowances the sum comprised in the receipt has been assigned is a non-commissioned officer or soldier of either of the said Armies, and serving in such capacity;	
	(*f*) for pensions or allowances by persons receiving such pensions or allowances in respect of their service as such non-commissioned officers or soldiers, and not serving the Government in any other capacity;	
	(*g*) given by a headman or lambardár for land-revenue or taxes collected by him;	

The Indian Stamp Bill.

(*Schedule I.—Stamp-duty on Instruments.*)

SCHEDULE I—*continued.*

	DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.
	Exemptions to 53—concld.	
	(*h*) given for money or securities for money deposited in the hands of any banker, to be accounted for: Provided the same be not expressed to be received of, or by the hands of, any other than the person to whom the same is to be accounted for:	
	Provided also that this exemption shall not extend to a receipt or acknowledgment for any sum paid or deposited for or upon a letter of allotment of a share, or in respect of a call upon any scrip or share of, or in, any *incorporated* Company or *other body corporate* or *such* proposed or intended Company or *body or in respect of a debenture being a marketable security.*	
[Art. 53, Sch. I.]	54. **RECONVEYANCE OF MORTGAGED PROPERTY—**	
	(*a*) if the consideration for which the property was mortgaged does not exceed Rs. 1,000.	The same duty as a Conveyance (No. 23) for the amount of such consideration as set forth in the Reconveyance.
	(*b*) in any other case	Ten rupees.
[Art. 54, Sch. I.]	55. **RELEASE,** that is to say, any instrument whereby a person renounces a claim upon another person or against any specified property—	
	(*a*) if the amount or value of the claim does not exceed Rs. 1,000	The same duty as a Bond (No. 15) for such amount or value as set forth in the Release.
	(*b*) in any other case	Five rupees.
[Art. 55, Sch. I.]	56. **RESPONDENTIA BOND,** that is to say, any instrument securing a loan on the cargo laden or to be laden on board a ship and making repayment contingent on the arrival of the cargo at the port of destination	The same duty as a Bond (No. 15) *for the amount of the loan secured.*
	REVOCATION OF ANY TRUST OR SETTLEMENT. *See* SETTLEMENT (*No. 58*); TRUST (*No. 64.*)	
[Art. 14, Sch. I.]	57. **SECURITY BOND OR MORTGAGE DEED** executed by way of security for the due execution of an office, or to account for money *or other property* received by virtue thereof *or executed by a surety to secure the due performance of a contract*—	
	(*a*) when the amount secured does not exceed *Rs.* 1,000 ...	The same duty as a Bond (No. 15) *for the amount secured.*
	(*b*) in any other case	Five rupees.
	Exemptions.	
[Art. 8, Sch. II.],	Bond *or other instrument,* when executed—	
	(*a*) by headmen nominated under rules framed in accordance with the Bengal *Irrigation* Act, 1876, section 99, for the due performance of their duties under that Act;	[Old cl. (*a*) omitted]. Beng. Act III of 1876.
	(*b*) by any person for the purpose of guaranteeing that the local income derived from private subscriptions to a charitable dispensary or hospital or any other object of public utility shall not be less than a specified sum per mensem;	
	(*c*) *under No. 3-A of the rules made by the Government of Bombay in Council under section 70 of the Bombay Irrigation Act, 1879.*	Bombay Act V of 1879.
[Art. 12 (*a*), Sch. II.]	(*d*) executed by persons taking advances under the Land Improvement Loans Act, 1883, or by their sureties, as security for the repayment of such advances;	XIX

The Indian Stamp Bill.

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*continued.*

DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.	
Exemptions to 57—concld.		
(*e*) executed by officers of Government or their sureties to secure the due execution of an office or the due accounting for money *or other property* received by virtue thereof;		[Old cl. (*e*) —*See Art. 9 Ex.*]
[Art. 57, Sch. I.] 58. **SETTLEMENT,**		
A.—Instrument of, (*including a deed of dower*)	The same duty as a Bond (No. 15) for a sum equal to the amount or value of the property settled as set forth in such Settlement.	
Exemption.		
[Art. 8 (*i*), Sch. II, Notfn. No. 5199 S.R., dated 1st November 1895.] (*a*) *Deed of Dower executed on the occasion of a marriage between Muhammadans.* (*b*) *Hludansa, that is to say, any settlement of immoveable property executed by a Buddhist in Burma for a religious purpose in which no value has been specified and on which a duty of Rs. 10 has been paid.*		
B.—Revocation of—	*Ten rupees.*	*VI of 1882.*
See also TRUST (*No. 64*).		
[S. 35, Act VI of 1882.] 59. **SHARE WARRANTS** *issued under the Indian Companies Act, 1882*	*Three quarters of the duty payable on a conveyance (No. 23) for a consideration equal to the nominal amount of the shares specified in the warrant.*	
Exemption.		
[Art. 15, Sch. II, Notfn. No. 5199 S. R., dated 1st November 1895.] *Share warrant when issued by a Company in pursuance of the Indian Companies Act, 1882, section 30, to have effect only upon payment, as composition for that duty, to the Collector of Stamp-Revenue, of*— (*a*) *three-quarters per centum of the whole subscribed capital of the company, or* (*b*) *if any Company which has paid the said duty or composition in full, subsequently issues an addition to its subscribed capital—three quarters per centum of the additional capital so issued.*		VI of 1882.
SCRIP.—*See* CERTIFICATE (*No. 19*)		
[Art. 58, Sch. I.] 60. **SHIPPING-ORDER** for or relating to the conveyance of goods on board of any vessel	One anna.	
[Art. 59, Sch. I.] 61. **SURRENDER OF LEASE**—		
(*a*) when the duty with which the lease is chargeable does not exceed five rupees.	The duty with which such lease is chargeable.	
(*b*) in any other case	Five rupees.	
Exemption.		
[Art. 16, Sch. II.] Surrender of lease, when such lease is exempted from duty.		
[Art. 60, Sch. I.] 62. **TRANSFER**—		
(*a*) Of shares in an *incorporated* Company or *other body corporate*	One-quarter of the duty payable on a Conveyance (No. 23) *for a consideration equal to the value of the share.*	

The Indian Stamp Bill.

(Schedule I.—Stamp-duty on Instruments.)

SCHEDULE I—*concluded.*

	DESCRIPTION OF INSTRUMENT.	PROPER STAMP-DUTY.	
	(*b*) *of debentures being marketable securities whether the debenture is liable to duty or not, except debentures provided for by* SECTION *8*	*One-quarter of the duty payable on a Conveyance (No. 23) for a consideration equal to the amount of the Debenture.*	
[Former (*b*) of Art.]	(*c*) of any interest secured by a Bond, Mortgage-deed or Policy of Insurance—		
	(*i*) If the duty on such Bond, Mortgage-deed or Policy does not exceed five rupees.	The duty with which such Bond, Mortgage-deed or Policy of Insurance is chargeable.	
	(*ii*) In any other case	Five rupees.	
[Former (*c*) of Art.]	(*d*) of any property under the Administrator General's Act, 1874, section 31	Ten rupees.	II of 1874.
[Former (*d*) of Art.]	(*e*) of any trust-property without consideration from one trustee to another trustee *or from a trustee to a beneficiary* ...	Five rupees.	
	Exemptions.		
[Art. 17, Sch. II.]	Transfers by endorsement—		
	(*a*) of a bill of exchange, cheque or promissory note;		
	(*b*) of a bill of lading, *delivery order, warrant for goods, or other mercantile document of title to goods;*		[Old cl. (*f*) Worked into (*b*).]
	(*c*) of a policy of insurance;		
	(*d*) of securities of the Government of India;		
	See also SECTION *8*.		
[Art. 60A, Sch. I.]	63. **TRANSFER OF LEASE** by way of assignment and not by way of under-lease.	The same duty as a Conveyance (No. 23) *for a consideration equal to the amount of the consideration for the Transfer.*	
	Exemption.		
	Transfer of any lease which is exempt from duty.		
[Art. 25, Sch. I.]	64. **TRUST**—		
	A—Declaration of — of, or concerning any property when made by any writing not being a WILL or SETTLEMENT	Fifteen rupees.	
[Art. 56, Sch. I.]	**B— Revocation of — of,** or concerning any property *when made* by any instrument other than a WILL	Ten rupees.	
	See also SETTLEMENT (*No. 58*)		
	VALUATION—See APPRAISEMENT, (*No. 8*).		
	VAKIL—*See* ENTRY AS A VAKIL (*No. 30*).		
[Art. 61, Sch. I.]	65. **WARRANT FOR GOODS,** that is to say, any instrument evidencing the title of any person therein named, or his assigns, or the holder thereof, to the property in any goods lying in or upon any dock, warehouse or wharf, such instrument being signed or certified by or on behalf of the person in whose custody such goods may be	Four annas.	

THE INDIAN STAMP BILL.

(*Schedule II.—Enactments Repealed.*)

SCHEDULE II.

ENACTMENTS REPEALED.

(See Section 79.)

No.	Year.	Title.	Extent of Repeal.
I	*1879*	*The Indian Stamp Act, 1879*	*The whole.*
VI	*1882*	*The Indian Companies Act, 1882*	*Section 35.*
IX	*1884*	*The Legal Practitioners' Act, 1884*	*Section 10.*
I	*1888*	*The Indian Stamp Act (1879) Amendment Act, 1888.*	*The whole.*
V	*1888*	*The Inventions and Designs Act, 1888*	*So much of the first Schedule as relates to the Indian Stamp Act, 1879 (I of 1879).*
XVIII	*1888*	*An Act to provide for the appointment of a Financial Commissioner for Burma and for the definition of his functions.*	*So much of the Schedule as relates to the Indian Stamp Act, 1879 (I of 1879).*
VI	*1889*	*The Probate and Administration Act, 1889*	*Sub-sections (3) and (4) of section 18.*
XX	*1890*	*The North-Western Provinces and Oudh Act, 1890.*	*So much of section 38 as relates to the Indian Stamp Act, 1879 (I of 1879.)*
XII	*1891*	*The Repealing and Amending Act, 1891*	*So much of Part I of the first and second Schedules as relates to the Indian Stamp Act, 1879 (I of 1879).*
VI	*1894*	*The Indian Stamp Act (1879) Amendment Act, 1894.*	*The whole.*
XIII	*1897*	*The Indian Stamp Act (1879) Amendment Act, 1897.*	*The whole.*

STATEMENT OF OBJECTS AND REASONS.

SINCE the Stamp Act of 1879 was passed the stamp law has been amended by ten different enactments. The present Bill proposes to repeal and re-enact in a consolidated form the whole of these enactments. It also proposes to introduce certain amendments where the working of the stamp law had disclosed defects. Alterations are printed in italics, and the material amendments which it is proposed to introduce are referred to in the notes on clauses given below. For facility of reference a comparative table is appended to this statement, showing how each section of the Indian Stamp Act, 1879, has been dealt with in the present Bill.

Notes on Clauses.

Clause 2 (2) and (3).—The definitions of "bill of exchange" and "bill of exchange payable on demand" are taken from the English Stamp Act, 1891 (54 and 55 Vict., c. 39). It will be noted that (as is the case in England) they include many instruments which could not be classed as "bills of exchange" within the definition given by the Negotiable Instruments Act, 1881, but which for stamp purposes ought to fall within the same category.

(7) The definition of "cheque" has been altered to bring it into accord with the definition given by the Negotiable Instruments Act, 1881.

(11) The definition of "duly stamped" has been amended. The former definition seems scarcely applicable where the instrument was first executed abroad and afterwards stamped in British India.

(13) A definition of "instrument" has been added.

(18) The definition of "policy of insurance" has been amended so as to make it cover policies of every description.

(20) The definition of "power-of-attorney" has been amended so as to make it clear that it relates only to powers-of-attorney and does not include all contracts creating the relationship of principal and agent.

(21) The definition of "promissory note" is taken from the English Stamp Act, 1891.

(22) In the definition of "receipt" the word "advertisement" is left out, as the machinery of the Act is not applicable to advertisements acknowledging receipt of money.

The definitions of "vessel," "writing" and "schedule" have been omitted as unnecessary, being now provided for in the General Clauses Act, 1897.

Clause 3.—The general exemption on behalf of Government contained in Schedule II of the Act of 1879 has now been inserted in the body of the Act as a proviso to this clause.

Clause 4.—A proviso has been added to this clause to make it clear that the option given to the parties to elect which instrument shall be considered as the principal instrument is not to be used for the purpose of evading stamp duty.

Clause 8.—A penalty clause taken from the English Act has been added.

Clause 9.—A paragraph has been added to this clause to provide for the composition or consolidation of duties.

Clause 12.—The present law leaves it doubtful how adhesive stamps ought to be cancelled. A paragraph has been added to indicate a proper manner for the cancellation of such stamps.

Clause 20.—Section 19 of the Act of 1879 has been omitted, as the fall of the exchange value of the rupee has rendered it inapplicable. The present clause puts all foreign currency on the same footing, and the second paragraph provides a simple machinery for fixing the rate of exchange for the purpose of stamp duty.

Clause 24.—An Explanation and Illustration have been added to this clause to remove doubts as to its construction.

Clause 25.—The drafting of this clause has been altered so as to make it applicable to annuities commencing at an indefinite future time.

Clause 29.—Sub-clause (*h*) of this clause has been amended so as to enable a Revenue-authority or Civil Court directing a partition, to remit at discretion the stamp duty payable on the portion of an estate which remains undivided, in consequence of some shareholders electing to continue to hold jointly.

Clause 33.—A paragraph has been added to this clause to provide for the interpretation of the terms "public offices" and "persons in charge of public offices."

Clause 34.—This clause has been added, because under the present law an audit officer of public accounts, before whom an unstamped receipt is produced, must impound the instrument, and has no power to require the substitution of a duly stamped receipt.

Clause 35.—A proviso has been added which prevents the exclusion of receipts from being admitted as evidence against the person by whose fault they are unstamped. A further proviso has been added to this clause to provide that the omission of a Government officer to see that an instrument is duly stamped shall not prejudice the rights of the parties to have the document admitted in evidence.

Clause 37.—This clause has been inserted to provide for the case where by inadvertence a stamp of improper description has been used.

Clause 39.—Power is given to the Collector to Act, in cases where he thinks fit to do so, without application made.

Clause 44.—A paragraph has been added to this clause to provide that, where a party to a suit has been obliged to pay stamp duty through the default of the other party, the duty so paid may be recovered as costs and need not be made the subject of a separate suit.

Clause 45.—This clause has been amended so as to give the Chief Controlling Revenue-authority power to remit as well as to refund penalties. It further provides for the refund of any excess duty which may have been paid. The effect of the clause will be to give an informal right of appeal from the Collector to the Chief Revenue-authority.

Clause 48.—This clause provides a simple procedure for the recovery of duties and penalties.

Clause 49.—The drafting of this clause has been altered so as to make its provisions clearer and to bring it more nearly into accord with the corresponding provisions of the English Stamp Duties Management Act, 1891 (54 and 55 Vict., c. 38).

Clause 50.—This clause is a redraft of the proviso to section 51 of the Act of 1879.

Clause 51.—This clause gives a new power to make allowances for stamp paper on printed forms used by incorporated companies where such forms have ceased to be required.

Clause 54.—A proviso has been added to this clause to make special provision for the case of licensed vendors of stamps.

Clause 55.—This clause is new and is intended to give facilities to Companies in respect of renewals of debentures.

Clause 56.—A paragraph has been added to make it clear that in all cases a Collector is subject to the Chief Controlling Revenue-authority.

Clause 61.—This clause has been amended so as to give to Appellate Courts revisionary powers in respect of decisions of criminal as well as of civil and revenue courts in the cases referred to.

Clause 64.—A clause has been added to cover acts which may not fall within the scope of the preceding clauses, but which nevertheless are done with the intent to defraud the Government of duty.

Clause 69.—This clause has been amended so as to make it clear that any one, whether licensed or not, can sell one-anna adhesive stamps. A corresponding provision has been made in clause 74.

Clause 73.—This clause intended to give Collectors power to trace unduly stamped documents is taken from the English Act.

NOTES TO SCHEDULE I.

GENERAL.—The arrangement of articles is more strictly alphabetical. The exemptions are printed under the Articles to which they relate, instead of being contained in a separate schedule, and exemptions of a general character, which have from time to time been made by notification are now embodied in the schedule itself. A few exemptions of documents executed in connexion with the business of public departments, have been removed from the Act and will be notified among the exemptions made by executive authority.

Article 1.—Acknowledgment of a debt. The attested acknowledgment of a debt is clearly in the nature of a bond and should be stamped as such.

Article 6.—Agreement to mortgage. A mortgage by deposit of title-deeds, commonly called an equitable mortgage, operates as an agreement to mortgage and is better described under that head. The duty is taken from the English Act.

Article 13.—Bills of Exchange. The exemption from stamp duty of Bills of Exchange payable on demand for less than twenty rupees has been omitted. There is no such exemption in England. As regards bills payable otherwise than on demand no alteration has been made in the duty, but the table of duties has been worked out at greater length for convenience of reference.

Article 15.—Bond. A similar table has been worked out with reference to bonds.

Article 17.—Instrument of Cancellation. This article is new.

Article 21.—Cheque. The exemption from stamp duty of cheques under twenty rupees has been omitted. There is no such exemption in England.

Article 23.—Conveyance. The duty has not been altered, but the table of duties has been worked out at greater length for convenience of reference.

Article 24.—Copy or Extract. Provision has been made for stamping duplicate receipts when signed or attested.

Article 27.—Debenture. This article is new; debentures at present come under the general conditions of Bonds, but it has been considered more convenient to deal with them under a separate article.

Article 32.—Instrument of Further Charge. This article has been altered so as to impose the higher duty in cases in which possession is given in pursuance of the instrument of further charge.

Article 35.—A provision for a proper duty on perpetual leases has been added.

Article 40.—Mortgage deed. An addition has been made to this article, taken from the English Stamp Act, 1891, to provide for cases of mortgage by further assurance. An exemption has been added to make it clear, that ordinary pawn transactions are not liable to stamp duty. The explanation regarding possession is intended to prevent evasion of the higher duty on mortgages with possession.

Article 41.—Mortgage of Crop. This is a new article, but it represents an existing notification reducing the duty in the case of mortgage of crops.

Article 47.—Policies of Insurance. The drafting of this article has been altered to make its provisions clearer.

Article 48.—Power-of-attorney. It has been found that sales and mortgages are sometimes effected through the medium of powers-of-attorney. Provision has been made that in this case they should pay the same duty as conveyances. A slight extension is also made of clause (*a*) of the article.

Article 49.—Promissory Notes. A promissory note payable on demand is in the nature of a continuing security and in England pays the same duty as a bill or note not payable on demand. The same rule is now made applicable to India.

Article 57.—The limitation of the duty is made to extend to the case of a surety executing a bond to secure due execution of a contract.

Article 58.—Settlement. The revocation of a settlement is now specially charged with the same duty as the revocation of any other trust. A provision is made which has the effect of exempting from section 27 of the Act a class of documents in which it is contrary to religious duty to express the value of the thing conveyed.

Article 59.—Share Warrants. This article is taken from section 35 of the Indian Companies Act, 1882. It more appropriately comes under this Act. The duty is expressed more simply, and is the same in amount.

Article 62.—Transfer. A special provision has been made in this article for the transfer of debentures which are marketable securities. The article has no application to debentures payable to bearer.

The 15th October, 1897.

J. WESTLAND.

J. M. MACPHERSON,
Secretary to the Government of India.

COMPARATIVE TABLE.

Showing how provisions of the Stamp Act, 1879 (I of 1879), have been dealt with in the Stamp Bill, 1897.

Stamp Act, 1879 (I of 1879).	Stamp Bill, 1897.
Section 1.—Short title, local extent and commencement.	Reproduced and amended by clause 1.
Section 2.—Saving	Omitted as unnecessary. See General Clauses Act, 1897, (X of 1897) ss. 6, 8 and 24.
Section 3.—Interpretation clause ...	Reproduced and amended by clause 2.
Section 4.—Schedules to be read as part of Act.	Omitted as unnecessary. See General Clauses Act, 1897, (X of 1897) s. 3 (48).
Section 5.—Instruments chargeable with duty	Reproduced and amended by clause 3.
Section 6.—Several instruments in single transactions.	Reproduced and amended by clause 4.
Section 7.—Instruments relating to several distinct matters. Instruments coming within several descriptions in Schedule I.	Reproduced by clauses 5 and 6.
Section 7-A.—Policies of sea-insurance ...	Reproduced and amended by clause 7.
Section 7-B.—Bonds, debentures or other certificates issued on loans under Act XI, 1879.	Reproduced by clause 8.
Section 8.—Power to reduce or remit duty ...	Reproduced and amended by clause 9.
Section 9.—Duties how to be paid ...	Reproduced by clause 10.
Section 10.—Use of adhesive stamps ...	Reproduced by clause 11.
Section 11.—Cancellation of adhesive stamps	Reproduced and amended by clause 12.
Section 12.—How instruments stamped with impressed stamps are to be written.	Reproduced by clause 13.
Section 13.—Only one instrument to be on same stamp.	Reproduced by clause 14.
Section 14.—Instrument written contrary to section 12 or 13 deemed unstamped.	Reproduced by clause 15.
Section 15.—Denoting duty	Reproduced and amended by clause 16.
Section 16.—Instruments executed in British India.	Reproduced by clause 17.
Section 17.—Instruments other than bills, cheques and notes executed out of British India.	Reproduced by clause 18.
Section 18.—Bills, cheques and notes drawn out of British India.	Reproduced by clause 19.
Section 19.—Conversion of amount expressed in certain currencies.	Omitted and included in clause 20.

Stamp Act, 1879 (I of 1897).	Stamp Bill, 1897.
Section 20.—Conversion of amount expressed in other foreign currencies.	Reproduced and amended by clause 20.
Section 21.—Stock and marketable securities how to be valued.	Reproduced and amended by clause 21.
Section 22.—Effect of statement of rate of exchange or average price.	Reproduced by clause 22.
Section 23.—Instruments reserving interest	Reproduced by clause 23.
Section 24.—How transfer in consideration of debt or subject to future payment, etc., to be charged.	Reproduced and amended by clause 24.
Section 25.—Valuation in case of annuity, etc.	Reproduced and amended by clause 25.
Section 26.—Stamp where value of subject-matter is indeterminate.	Reproduced by clause 26.
Section 27.—Facts affecting duty to be set forth in instrument.	Reproduced by clause 27.
Section 28.—Direction as to duty in case of certain conveyances.	Reproduced by clause 28.
Section 29.—Duties by whom payable ...	Reproduced and amended by clause 29.
Section 30.—Adjudication as to proper stamp. Collector may call for abstract and evidence. Provison.	Reproduced by clause 31.
Section 31.—Certificate by Collector ...	Reproduced by clause 32.
Section 32.—Payment of fees under section 30 how made.	Omitted as now unnecessary.
Section 33.—Examination and impounding of instruments.	Reproduced and amended by clause 33.
Section 34.—Instruments not duly stamped inadmissible in evidence, etc. Proviso. Instruments admissible on payment of duty and penalty; and in certain criminal proceedings. Admission of instrument not to be questioned.	Reproduced and amended by clauses 35 and 36.
Section 35.—Instruments impounded how dealt with.	Reproduced by clause 38.
Section 36.—Collector's power to refund penalty paid under section 35, first paragraph.	Reproduced by clause 39.
Section 37.—Collector's power to stamp instruments impounded.	Reproduced by clause 40.
Section 38.—Instruments unduly stamped by accident.	Reproduced by clause 41.

Stamp Act, 1879 (I of 1897).	Stamp Bill, 1897.
Section 39.—Endorsement of instruments on which duty has been paid under sections 34, 37 or 38.	Reproduced by clause 42.
Section 40.—Prosecution for offence against Stamp-law. Proviso.	Reproduced and amended by clause 43.
Section 41.—Persons paying duty or penalty may recover same in certain cases.	Reproduced and amended by clause 44.
Section 42.—Remission of penalty paid under section 34 or 37.	Reproduced by clause 45, paragraph (*a*).
Section 43.—Non-liability for loss of instruments sent under section 35. Copy may be made of instruments so sent.	Reproduced by clause 46.
Section 44.—Power of payee to stamp bills, notes and cheques received by him unstamped.	Reproduced and amended by clause 47.
Section 45.—Procedure where Collector feels doubt as to duty chargeable.	Reproduced and amended by clause 56.
Section 46.—Reference by Revenue Authority to High Court.	Reproduced by clause 57.
Section 47.—Power of Court to call for further particulars.	Reproduced by clause 58.
Section 48.—Procedure in disposing of reference.	Reproduced by clause 59.
Section 49.—Reference by other Courts to High Court.	Reproduced by clause 60.
Section 50.—Revision of certain decisions of Courts regarding the sufficiency of stamps.	Reproduced and amended by clause 61.
Section 51.—Allowance for spoiled stamps.	Reproduced and amended by clauses 49 and 50.
Section 52.—Allowance for misused stamps.	Reproduced by clause 52.
Section 53.—Allowance under sections 51 and 52 how to be made.	Reproduced by clause 53.
Section 54.—Allowance for stamps not required for use.	Reproduced and amended by clause 54.
Section 55.—Powers to make rules relating to sale of stamps.	Reproduced and amended by clause 74.
Section 56.—Power to make rules generally to carry out Act.	Reproduced and amended by clause 75.
Section 57 (para. 1).—Certain powers exerciseable from time to time.	Omitted. See General Clauses Act, 1897 (X of 1897), ss. 14 and 21.
Section 57 (para. 2).—Publication of rules ...	Reproduced and amended by clause 76.
Section 58.—Obligation to give receipt in certain cases.	Reproduced by clause 30.

Stamp Act, 1879 (I of 1897).	Stamp Bill, 1897.
Section 59.—Saving as to Court-fees ...	Reproduced by clause 77.
Section 60.—Act to be translated, indexed and sold cheaply.	Reproduced and amended by clause 78.
Section 61.—Penalty for executing, etc., instrument not duly stamped.	Reproduced by clause 62.
Section 62.—Penalty for failure to cancel adhesive stamp.	Reproduced by clause 63.
Section 63.—Penalty for omission to comply with provisions of section 27.	Reproduced and amended by clause 64.
Section 64.—Penalty for refusal to give receipt, and for devices to evade duty on receipt.	Reproduced by clause 65.
Section 65.—Penalty for not making out policy, or making etc., any policy not duly stamped.	Reproduced by clause 66.
Section 66.—Penalty for not drawing full number of bills or marine policies purporting to be in sets.	Reproduced by clause 67.
Section 67.—Penalty for post-dating bills, etc.: for other devices to defraud the revenue ...	Reproduced by clause 68.
Section 68.—Penalty for breach of rule relating to sale of stamps and for unauthorised sale.	Reproduced and amended by clause 69.
Section 69.—Institution and conduct of prosecutions.	Reproduced by clause 70.
Section 70.—Jurisdiction of Magistrates ...	Reproduced by clause 71.
Section 71.—Place of trial	Reproduced and amended by clause 72.
Section 72.—Operation of other laws barred...	Omitted. See General Clauses Act, 1897 (X of 1897), s. 26.
	The following new clauses have been added, namely, clause 2 (3), (12), (13), (15) (*d*), (18) (*b*) and (21), and clauses 20 (2), 34, 37, 45 (1) and (3), 48, 51, 55, 62 (2) 73, and 79.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 15th October, 1897:

NO. 17 OF 1897.

A Bill to amend the Indian Penal Code in relation to Extra-territorial Offences.

WHEREAS it is expedient to amend the Indian Penal Code in relation to extra-territorial offences; It is hereby enacted as follows:

XLV of 1860.

1. (*1*) This Act may be called the Indian Penal Code Amendment Act, 1898; and

Short title and commencement.

(*2*) It shall come into force at once.

2. Section 4 of the Indian Penal Code is hereby repealed, and the following is substituted therefor, namely:

XLV of 1860.

Substitution of new section for section 4, Act XLV, 1860.

'4. The provisions of this Code apply to any offence committed by—

Extension of Code to extra-territorial offences.

(*1*) any Native Indian subject of Her Majesty in any place without and beyond British India; [33 & 33 Vict., c. 98, s. 1.]

(*2*) any other British subject within the territories of any Native Prince or Chief in India; [28 & 29 Vict., c. 17, s. 1.]

(*3*) any servant of the Queen, whether a British subject or not, within the territories of any Native Prince or Chief in India. [24 & 25 Vict., c. 67, s. 22 and I. P. C., s. 4.]

Explanation.—In this section the word "offence" includes every act committed outside British India which, if committed in British India, would be punishable under this Code.

Illustrations.

(*a*) A, a coolie, who is a Native Indian subject, commits a murder in Uganda. He can be tried and convicted of murder in any place in British India in which he may be found.

(*b*) B, a European British subject, commits a rape in tribal territory on the British side of the Afghan frontier. He can be tried and convicted of rape in any place in British India in which he may be found.

(*c*) C, a foreigner who is in the service of the Punjab Government, commits a murder in Jhind. He can be tried and convicted of murder at any place in British India in which he may be found.

(*d*) D, a British subject living in Indore, instigates E to commit a murder in Bombay. D is guilty of abetting murder.'

3. After section 108 of the Indian Penal Code the following shall be added, namely: XLV of 1860.

Abetment in British India of offences outside it.

"108A. A person abets an offence within the meaning of this Code who, in British India, abets the commission of any act without and beyond British India which would constitute an offence if committed in British India. [24 & 25 Vict., c. 67, s. 22.]

Abetment in British India of offences outside it.

Illustration.

A, in British India, instigates B, a foreigner in Goa, to commit a murder in Goa. A is guilty of abetting murder."

STATEMENT OF OBJECTS AND REASONS.

The Indian Penal Code was enacted in 1860 under the powers conferred by s. 43 of the Government of India Act, 1833 (3 & 4 Will. 4, c. 85)—see *Reg.* v. *Elmstone* (1878), 7 Bom. Cr. Ca. at p. 100.

2. Since that date Parliament has bestowed on the Indian Legislature various powers of legislating for extra-territorial offences, but no corresponding amendment has been made in the Indian Penal Code. To a large, but not to the full, extent those powers have been taken advantage of by s. 8 of the Foreign Jurisdiction and Extradition Act, 1879 (XXI of 1879). It seems desirable that the Code itself should specify the extent of its

extra-territorial operation. At present this is done only in a fragmentary and misleading manner, and, as something more than mere consolidation is required, the present Bill has been prepared. It is proposed eventually to consolidate the various enactments which have from time to time been passed to amend the Code, but it is better to keep amendment distinct from consolidation.

3. The English theory of the territoriality of crime is purely a doctrine of the common law and probably owes its origin to the old rules of criminal pleading. It is not accepted by other nations—see *Hall's International Law*, Ed. 3, p. 206, and the judgment of West, J., in *Reg.* v. *Moorga Chetty* (1881), I. L. R. 5 Bom., at p. 362. Having regard to the circumstances of India, Parliament has departed from the English rule, and has authorised the Indian Legislature to deal in certain cases with extra-territorial offences. It seems right that these powers should be exercised to their full extent, and the present Bill will effect that object. Even then certain anomalies will remain, but they can be removed only by further Parliamentary legislation.

Notes on Clauses.

Clause 2.—This clause proposes to repeal s. 4 of the Code and to substitute a new section therefor.

Clause (*1*) of the new section follows the words of s. 1 of the Indian Councils Act, 1869 (32 & 33 Vict., c. 98), and corresponds with s. 8 (*1*) of the Foreign Jurisdiction and Extradition Act, 1879 (XXI of 1879).

Clause (*2*) follows the words of s. 1 of the Government of India Act, 1865 (28 & 29 Vict., c. 17), by using the term "British subject," and will extend the operation of s. 8 (*2*) of Act XXI of 1879, which applies only to *European* British subjects. There are many British subjects who are neither European British subjects as defined by the Act, nor Native Indian subjects, *e.g.*, Cingalese, Tasmanians and inhabitants of the Straits Settlements.

As regards clause (3), by s. 22 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67), the Indian Legislature is empowered to legislate for "all servants of the Government of India within the dominions of Princes and States in alliance with Her Majesty." By s. 4 of the Indian Penal Code the provisions of the Code are extended to every *servant of the Queen* "within the dominions of any Prince or State in alliance with the Queen, by virtue of any treaty or engagement heretofore entered into with the East India Company, or which may have been or may hereafter be made in the name of the Queen by any government of India." Neither the Indian Act nor the English Statute draws any distinction between Government servants who are British subjects and those who are not. The words "whether a British subject or not" have, therefore, been inserted in the Bill to negative the decision in *Empress* v. *Natwarai*, (1891) I. L. R. 16 Bom. 178, where it was held that a servant of Government who was the subject of a Native State, could not be tried in British India for an offence committed outside. The necessary consequential amendments will be made in the Code of Criminal Procedure.

The expression "India" is defined by s. 3 (27) of the General Clauses Act, 1897 (X of 1897), and coincides with the definition given by the Interpretation Act, 1889 (52 & 53 Vict., c. 63).

Clause 3.—This clause is intended to carry out a suggestion of the Bombay Government consequent on a decision of the Bombay High Court to the effect that a person in British India who instigated a Portuguese to commit a murder in Goa, was guilty of no offence—see *Queen Empress* v. *Gunpatrao* (1894), I. L. R. 19 Bom. 105. Presumably, if the murderer had been a Native Indian subject, the present law would have reached him; but the point was not discussed. The Indian Legislature has power to legislate for all persons in British India, and there is no reason why British India should be an Alsatia for the instigators of crime.

M. D. CHALMERS.

The 7th October, 1897.

J. M. MACPHERSON,
Secretary to the Government of India.

Continuation sheets of Part V of the *Gazette of India* dated 16th October 1897, which has been issued from Simla.

GOVERNMENT OF INDIA.

LEGISLATIVE DEPARTMENT.

The following Bill was introduced in the Council of the Governor General of India for the purpose of making Laws and Regulations on the 15th October, 1897:—

No. 18 OF 1897.

CRIMINAL PROCEDURE BILL.

CONTENTS.

C.—Ordinary and Additional Powers.

SECTIONS.

D.—Conferment, Continuance and Cancellation of Powers.

PART III.

GENERAL PROVISIONS.

CHAPTER IV.

OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND PERSONS MAKING ARRESTS.

CHAPTER V.

OF ARREST, ESCAPE AND RETAKING.

A.—Arrest generally.

B.—Arrest without Warrant.

SECTIONS.

CHAPTER VI.

OF PROCESSES TO COMPEL APPEARANCE.

A.—Summons.

B.—Warrant of Arrest.

C.—Proclamation and Attachment.

PART VIII.

SPECIAL PROCEEDINGS.

CHAPTER XXXIII.

CRIMINAL PROCEEDINGS AGAINST EUROPEANS AND AMERICANS.

CHAPTER XXXIV.

LUNATICS.

CHAPTER XXXV.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

The Code of Criminal Procedure, 1898.

(*Part I.—Preliminary. Chapter I.—Sections 1-4.*)

[*All new matter has been printed in italics, and the numbers of the existing sections have been noted in the margin where changes have been made in the numbering.*]

A Bill to consolidate and amend the law relating to Criminal Procedure.

Preamble.

WHEREAS it is expedient to consolidate and amend the law relating to Criminal Procedure; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

CHAPTER I.

Short title. Commencement.

1. (*1*) This Act may be called the Code of Criminal Procedure, *1898*; and *it* shall come into force on the day of *1898*.

Extent.

(*2*) It extends to the whole of British India; but, in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law *for the time being* in force, or shall apply to—

(*a*) the Commissioners of Police in the towns of Calcutta, Madras and Bombay, or the police in the towns of Calcutta and Bombay;

(*b*) heads of villages in the Presidency of Fort St. George; or

(*c*) village police-officers in the Presidency of Bombay;

Provided that the Local Government may, if it thinks fit, with the sanction of the Governor General in Council, by notification in the official Gazette, extend any of the provisions of this Code, with such modifications as may be required, to such excepted persons.

Repeal of enactments.

2. (*1*) On and from the day of , *1898*, the enactments mentioned in the first schedule shall be repealed to the extent specified in the *fourth* column thereof, but not so as to restore any jurisdiction or form of procedure not then existing or followed, or to render unlawful the continuance of any confinement which is then lawful.

Notifications, etc., under repealed Acts.

(*2*) All notifications published, proclamations issued, powers conferred, forms prescribed, local limits defined, sentences passed and orders, rules and appointments made, under any enactment hereby repealed, or under any enactment repealed by any such enactment, and which are in force immediately before the day of , *1898*, shall be deemed to have been respectively published, issued, conferred, prescribed, defined, passed and made under the corresponding section of this Code.

Reference to Code of Criminal Procedure and other repealed enactments.

3. (*1*) In every enactment passed before this Code comes into force, in which reference is made to, or to any chapter or section of, the Code of Criminal Procedure Act, XXV of 1861 or Act X of 1872, *or Act X of 1882*, or to any other enactment hereby repealed, such reference shall, so far as may be practicable, be taken to be made to this Code or to its corresponding chapter or section.

Expressions in former Acts.

(*2*) In every enactment passed before this Code comes into force the expressions "Officer exercising (or 'having') the powers (or 'the full powers') of a Magistrate," "Subordinate Magistrate, first class," and "Subordinate Magistrate, second class," shall respectively be deemed to mean "Magistrate of the first class," "Magistrate of the second class" and "Magistrate of the third class," the expression "Magistrate of a division of a district" shall be deemed to mean "Subdivisional Magistrate," the expression "Magistrate of the district" shall be deemed to mean "District Magistrate," and the expression "Magistrate of Police" shall be deemed to mean "Presidency Magistrate" *and the expression "Joint Sessions Judge" shall mean "additional Sessions Judge."*

Definitions.

4. (*1*) In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context:—

(*a*) *"accused" includes any person against whom a complaint is made, or proceedings under this Code are or are sought to be instituted:*

"Advocate General."

(*b*) "Advocate General" includes also a Government Advocate, or, where there is no Advocate General or Government Advocate, such officer as the Local Government may, from time to time, appoint in this behalf;

The Code of Criminal Procedure, 1898.

(Part I.—Preliminary. Chapter I.—Section 4.)

(c) "bailable offence" means an offence shewn as bailable in the second schedule, or which is made bailable by any other law for the time being in force; "and non-bailable offence" means any other offence:

"Bailable offence." "Non-bailable offence."

(d) "*charge*" *includes any head of charge when the charge contains more heads than one:*

(e) "Chief Justice" includes also the Senior Judge of the Chief Court of the Punjab and the Court of the Recorder of Rangoon:

"Chief Justice."

(f) "Clerk of the Crown" includes any officer specially appointed by the Chief Justice to discharge the functions given by this Code to the Clerk of the Crown:

"Clerk of the Crown."

(g) "cognizable offence" means an offence for, and "cognizable case" means a case in, which a police-officer, within or without the presidency-towns, may, in accordance with the second schedule, or under any law for the time being in force, arrest without warrant:

"Cognizable offence." "Cognizable case."

(h) "*Commissioner of Police*" *includes a Deputy Commissioner of Police:*

(i) "complaint" means the allegation made orally or in writing to a Magistrate, with a view to his taking action, under this Code, that some persons whether known or unknown, has committed an offence *or has otherwise rendered himself liable to proceedings under this Code. It includes a complaint under the Cattle-trespass Act, 1871*; but *it* does not include the report of a police-officer:

"Complaint."

1871.

(j) "*Court of Session*" *includes Sessions Judge, Additional Sessions Judge and Assistant Sessions Judge:*

(k) "European British subject" means—

"European British subject."

(i) any subject of Her Majesty born, naturalised or domiciled in the United Kingdom of Great Britain and Ireland or in any of the European, American or Australian Colonies or Possessions of Her Majesty, or in the Colony of New Zealand, or in the Colony of Good Hope or Natal;

(ii) any child or grand-child of any such person by legitimate descent:

(l) "High Court" means, in reference to proceedings against European British subjects or persons jointly charged with European British subjects, the High Courts of Judicature at Fort William, Madras and Bombay, the High Court of Judicature for the North-Western Provinces, the Chief Court of the Punjab and the Recorder of Rangoon:

"High Court."

In other cases "High Court" means the highest Court of criminal appeal or revision for any local area; or, where no such Court is established under any law for the time being in force, such officer as the Governor General in Council may appoint in this behalf:

(m) "inquiry" includes every inquiry conducted under this Code by a Magistrate or Court *preliminary to trial or in which no trial is held*:

"Inquiry."

(n) "investigation" includes all the proceedings under this Code for the collection of evidence conducted by the police or by any person (other than a Magistrate or police-officer) who is authorised by a Magistrate in this behalf:

"Investigation."

(o) "judicial proceeding" means any proceeding in the course of which evidence is or may be legally taken *and it also includes every other proceeding consequential thereon*:

"Judicial proceeding."

(p) "non-cognizable offence" means an offence for, and "non-cognizable case" means a case in, which a police-officer, within or without the presidency-towns, may not arrest without warrant:

"Non-cognizable offence." "Non-cognizable case."

(q) "offence" means any act or omission made punishable by any law for the time being in force:

"Offence."

(r) "officer in charge of a police-station" includes, when the officer in charge of the police-station is absent

"Officer in charge of a police-station."

The Code of Criminal Procedure, 1898.

(Part I.—Preliminary.—Chapter I.—Section 5.—Part II.—Constitution and Powers of Criminal Courts and Offices.—Chapter II.—Of the Constitution of Criminal Courts and Offices.—Sections 6-7.)

from the station-house or unable from illness to perform his duties, the police-officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the Local Government so directs, any other police-officer so present:

"Place." (*s*) "place" includes also a house, building, tent and vessel *or other construction*:

"Pleader." (*t*) "pleader," used with reference to any proceeding in any Court, means a pleader *or mukhtar* authorised under any law for the time being in force to practise in such Court, and includes (1) an advocate, a vakil and an attorney of a High Court so authorised, and (2) any person appointed with the permission of the Court to act in such proceeding:

"Police-station." (*u*) "police-station" means any post *or place* declared, generally or specially, by the Local Government to be a police-station for the purposes of this Code, and includes any local area specified by the Local Government in this behalf:

"Public Prosecutor." (*v*) "Public Prosecutor" means any person appointed under section 492, and includes any person acting under the directions of a Public Prosecutor and any person conducting a prosecution on behalf of Her Majesty in any High Court in the exercise of its original criminal jurisdiction;

"Subdivision." (*w*) "subdivision" means a subdivision of a district *made or continued under this Code*:

"Summons-case." (*x*) "summons-case" means a case relating to an offence not *being a warrant-case*:

"Trial." (*y*) "*Trial*" *means the proceedings taken in Court after a charge has been drawn up, and includes the sentence (if any) on the offender;*

it also includes the proceedings under Chapters XX and XXII from the time when the accused appears in Court:

"Warrant-case." (*z*) "Warrant-case" means a case relating to an offence punishable with death, transportation or imprisonment for a term exceeding six months:

Words referring to acts. (2) Words which refer to acts done extend also to illegal omissions; and

Words to have same meaning as in Penal Code. all words and expressions used herein and defined in the Indian Penal Code, and not hereinbefore defined, shall be deemed to have the meanings respectively attributed to them by that Code. XLV of 1860.

Trial of offences under Penal Code. 5. (1) All offences under the Indian Penal Code shall be *investigated*, inquired into, tried, *and otherwise dealt with* according to the provisions hereinafter contained.

Trial of offences against other laws. (2) All offences under any other law shall be *investigated*, inquired into, tried, *and otherwise dealt with* according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of inquiring into or trying such offences.

PART II.

CONSTITUTION AND POWERS OF CRIMINAL COURTS AND OFFICES.

CHAPTER II.

OF THE CONSTITUTION OF CRIMINAL COURTS AND OFFICES.

A.—Classes of Criminal Courts.

Classes of Criminal Courts. 6. Besides the High Courts and the Courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in British India, namely:—

I.—Courts of Session:
II.—Presidency Magistrates:
III.—Magistrates of the first class:
IV.—Magistrates of the second class:
V.—Magistrates of the third class.

B.—Territorial Divisions.

Sessions Divisions and Districts. 7. (1) Every province (excluding the presidency-towns) shall be a sessions division, or shall consist of sessions divisions: and every sessions division shall, for the purposes of this Code, be a district or consist of districts.

Power to alter divisions and districts. (2) The Local Government may alter the limits, or, with the previous sanction of the Governor

The Code of Criminal Procedure, 1898.

(Part II.—Constitution and Powers of Criminal Courts and Offices.—Chapter II.—Of the Constitution of Criminal Courts and Offices.—Sections 8-15.)

General in Council, the number of such divisions and districts.

(3) The sessions divisions and districts existing when this Code comes into force shall be sessions divisions and districts respectively, unless and until they are so altered.

Existing divisions and districts maintained till altered.

(4) Every presidency-town shall, for the purposes of this Code, be deemed to be a district.

Presidency-towns to be deemed districts.

8. (1) The Local Government may divide any district outside the presidency-towns into subdivisions, or make any portion of any such district a subdivision, and may alter the limits of any subdivision.

Power to divide districts into subdivisions.

(2) All existing subdivisions which are now usually put under the charge of a Magistrate shall be deemed to have been made under this Code.

Existing subdivisions maintained.

C.—Courts and Offices outside the Presidency-towns.

9. (1) The Local Government shall establish a Court of Session for every sessions division, and appoint a Judge of such Court.

Court of Session.

(2) The Local Government may also appoint Additional Sessions Judges, and Assistant Sessions Judges to exercise jurisdiction in one or more such Courts.

(3) All Courts of Session existing when this Code comes into force shall be deemed to have been established under this Act.

10. (1) In every district outside the presidency-towns the Local Government shall appoint a Magistrate of the first class, who shall be called the District Magistrate.

District Magistrate.

(2) *The Local Government may from time to time appoint any Magistrate of the first class to be an additional District Magistrate for a period not exceeding three months, and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code that the Local Government may direct.*

11. Whenever, in consequence of the office of a District Magistrate becoming vacant, any officer succeeds temporarily to the chief executive administration of the district, such officer shall, pending the orders of the Local Government, exercise all the powers and perform all the duties respectively conferred and imposed by this Code on the District Magistrate.

Officers temporarily succeeding to vacancies in office of District Magistrate.

12. (1) The Local Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any district outside the presidency-towns; and the Local Government, or the District Magistrate subject to the control of the Local Government, may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

Subordinate Magistrates.

Local limits of their jurisdiction.

(2) Except as otherwise provided by such definition, the *ordinary* jurisdiction and powers of such persons shall extend throughout such district.

13. (1) The Local Government may place any Magistrate of the first or second class in charge of a subdivision, and relieve him of the charge as occasion requires.

Power to put Magistrate in charge of subdivision.

(2) Such Magistrates shall be called Subdivisional Magistrates.

(3) The Local Government may delegate its powers under this section to the District Magistrate.

Delegation of powers to District Magistrate.

14. (1) The Local Government may confer upon any person all or any of the powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class in respect to particular cases or to a particular class or particular classes of cases, or in regard to cases generally, in any local area outside the presidency-towns.

Special Magistrates.

(2) Such Magistrates shall be called Special Magistrates.

(3) With the previous sanction of the Governor General in Council, the Local Government may delegate, with such limitations as it thinks fit, to any officer under its control the power conferred by sub-section (1).

(4) No powers shall be conferred under this section on any police-officer below the grade of Assistant District Superintendent, and no powers shall be so conferred except so far as may be necessary for preserving the peace, preventing crime and detecting, apprehending and detaining offenders in order to their being brought before a Magistrate, and for the performance by the officer of any other duties imposed upon him by any law for the time being in force.

15. (1) The Local Government may direct any two or more Magistrates in any place outside the presidency-towns to sit together as a Bench, and may by order invest such Bench with any of the

Benches of Magistrates.

The Code of Criminal Procedure, 1898.

(*Part II.—Constitution and Powers of Criminal Courts and Offices—Chapter II.—Of the Constitution of Criminal Courts and Offices.—Sections 16-21.*)

powers conferred or conferrable by or under this Code on a Magistrate of the first, second or third class, and direct it to exercise such powers in such cases, or such classes of cases only, and within such local limits, as the Local Government thinks fit.

Powers exercisable by Bench in absence of special direction.

(2) Except as otherwise provided by any order under this section, every such Bench shall have the powers conferred by this Code on a Magistrate of the highest class to which any one of its members who is present taking part in the proceedings as a member of the Bench belongs, and as far as practicable shall, for the purposes of this Code, be deemed to be a Magistrate of such class.

Power to frame rules for guidance of Benches.

16. The Local Government may, or, subject to the control of the Local Government, the District Magistrate may, from time to time, make rules consistent with this Code for the guidance of Magistrates' Benches in any district respecting the following subjects:—

(*a*) the classes of cases to be tried;

(*b*) the times and places of sitting;

(*c*) the constitution of the Bench for conducting trials;

(*d*) the mode of settling differences of opinion which may arise between the Magistrates in session.

Subordination of Magistrates and Benches to District Magistrate;

17. (1) All Magistrates appointed under sections 12, 13 and 14, and all Benches constituted under section 15, shall be subordinate to the District Magistrate, and he may, from time to time, make rules *or give special orders* consistent with this Code as to the distribution of business among such Magistrates and Benches; and

to Subdivisional Magistrate.

(2) Every Magistrate (other than a Subdivisional Magistrate) and every Bench exercising powers in a subdivision shall *also* be subordinate to the Subdivisional Magistrate, subject, however, to the general control of the District Magistrate.

Subordination of Assistant Sessions Judges to Sessions Judge.

(3) All Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction, and he may, from time to time, make rules consistent with this Code as to the distribution of business among such Assistant Sessions Judges.

(4) *The Sessions Judge may also make rules for the disposal of any urgent application or matter by an Assistant Sessions Judge, when he himself is unavoidably absent or incapable of acting, and the Assistant Sessions Judge shall have jurisdiction to deal with any such application or matter.*

(5) Neither the District Magistrate nor the Magistrates or Benches appointed or constituted under sections 12, 13, 14 and 15 shall be subordinate to the Sessions Judge, except to the extent and in the manner hereinafter expressly provided.

D.—Courts of Presidency Magistrates.

Appointment of Presidency Magistrates.

18. (1) The Local Government shall, from time to time, appoint a sufficient number of persons (hereinafter called Presidency Magistrates) to be Magistrates for each of the presidency towns, and shall appoint one of such persons to be Chief Magistrate for each such town.

(2) Any two or more of such persons may (subject to the rules made by the Chief Magistrate under the power hereinafter conferred) sit together as a Bench.

Local limits of their jurisdiction.

19. Every Presidency Magistrate shall exercise jurisdiction in all places within the presidency-town for which he is appointed, and within the limits of the port of such town and of any navigable river or channel leading thereto, as such limits are defined under the law for the time being in force for the regulation of ports and port-dues.

Bombay Court of Petty Sessions.

20. Every Presidency Magistrate in the town of Bombay shall exercise all jurisdiction which, under any law in force immediately before the first day of April, 1877, was exercised in that town by the Court of Petty Sessions:

Provided that appeals under the law for the time being regulating the municipality of Bombay shall lie to the Chief Magistrate only.

Chief Magistrate.

21. Every Chief Magistrate shall exercise within the local limits of his jurisdiction all the powers conferred on him by this Code or which by any law or rule in force immediately before this Code comes into force are required to be exercised by any Senior or Chief Magistrate, and may, from time to time, with the previous sanction of the Local Government, make rules consistent with this Code to regulate—

(*a*) the conduct and distribution of business and the practice in the Courts of the Magistrates of the town;

(*b*) the times and places at which Benches of Magistrates shall sit;

(*c*) the constitution of such Benches; and

(*d*) the mode of settling differences of opinion which may arise between Magistrates in session;

The Code of Criminal Procedure, 1898.

(Part II.—Constitution and Powers of Criminal Courts and Offices.—Chapter II.—Of the Constitution of Criminal Courts and Offices.—Sections 22-27.—Chapter III.—Powers of Courts.—Sections 28-29.)

(e) *any other matter which could be dealt with by a District Magistrate under his general powers of control over Magistrates subordinate to him.*

E.—Justices of the Peace.

Justices of the Peace for the Mufassal.

22. The Governor General in Council, so far as regards the whole or any part of British India outside the presidency-towns,

and every Local Government, so far as regards the territories subject to its administration (other than the towns aforesaid),

may, by notification in the official Gazette, appoint such European British subjects as he or it thinks fit to be Justices of the Peace within and for the territories mentioned in such notification.

Justices of the Peace for the presidency-towns.

23. *The Local Government, so far as regards the towns of Calcutta, Madras and Bombay* may, by notification in the official Gazette, appoint to be Justices of the Peace within the limits of the town mentioned in such notification any persons resident within British India and not being the subjects of any foreign State whom *the* Local Government thinks fit.

Present Justices of the Peace.

24. (1) Every person now acting as a Justice of the Peace within and for any part of British India other than the said towns, under any commission issued by a High Court, shall be deemed to have been appointed under section 22 by the Governor General in Council to act as a Justice of the Peace for the whole of British India other than the said towns.

(2) Every person now acting as a Justice of the Peace within the limits of any of the said towns under any such commission shall be deemed to have been appointed under section 23 by the Local Government.

Ex-officio Justices of the Peace.

25. In virtue of their respective offices, the Governor General, the Ordinary Members of the Council of the Governor General, the Judges of the High Courts and the Recorder of Rangoon are Justices of the Peace within and for the whole of British India, Sessions Judges and District Magistrates are Justices of the Peace within and for the whole of the territories administered by the Local Government under which they are serving, and the Presidency Magistrates are Justices of the Peace within and for the towns of which they are respectively Magistrates.

F.—Suspension and Removal.

Suspension and removal of Judges and Magistrates.

26. All Judges of Criminal Courts other than the High Courts established by Royal Charter, and all Magistrates, may be suspended or removed from office by the Local Government:

Provided that such Judges and Magistrates as now are liable to be suspended or removed from office by the Governor General in Council only shall not be suspended or removed from office by any other authority.

Suspension and removal of Justices of the Peace.

27. The Governor General in Council may suspend or remove from office any Justice of the Peace appointed by him, and the Local Government may suspend or remove from office any Justice of the Peace appointed by it.

CHAPTER III.

POWERS OF COURTS.

A.—Description of Offences cognizable by each Court.

Offences under Penal Code.

28. Subject to the other provisions of this Code, any offence under the Indian Penal Code XLV of 1860 may be tried—

(a) *by the High Court, or*

(b) *by the Court of Session, or*

(c) *by any other Court by which such offence is shewn in the eighth column of the Second Schedule to be triable.*

Illustration.

A is committed to the Sessions Court on a charge of culpable homicide. He may be convicted only of voluntarily causing hurt, an offence triable by a Magistrate.

Offences under other laws.

29. (1) Any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

(2) When no Court is so mentioned, it may be tried by the High Court or by any Court constituted under this Code:

Provided that—

(a) no Magistrate of the first class shall try any such offence which is punishable with imprisonment for a term which may exceed seven years;

(b) no Magistrate of the second class shall try any such offence which is punishable with imprisonment for a term which may *exceed* three years; and

(c) no Magistrate of the third class shall try any such offence which is punishable with imprisonment for a term which may *exceed* one year.

The Code of Criminal Procedure, 1898.

(Part II.—Constitution and Powers of Criminal Courts and Offices.—Chapter III.—Powers of Courts.—Sections 30-35.)

Offences not punishable with death.

30. (*1*) In the territories respectively administered by the Lieutenant-Governor of the Punjab and the Chief Commissioners of Oudh, the Central Provinces, Coorg and Assam and in those parts of the other Provinces in which there are Deputy Commissioners or Assistant Commissioners, the Local Government may, notwithstanding anything contained in section 29, invest the District Magistrate with power to try as a Magistrate all offences not punishable with death.

(2) *The provisions of this section apply also to Lower Burma.*

B.—Sentences which may be passed by Courts of various Classes.

Sentences which High Courts and Sessions Judges may pass.

31. (*1*) A High Court may pass any sentence authorised by law.

(2) A Sessions Judge, *or* Additional Sessions Judge may pass any sentence authorised by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

(3) An Assistant Sessions Judge may pass any sentence authorised by law, except a sentence of death or of transportation for a term exceeding seven years, or of imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding four years, and any sentence of transportation passed by an Assistant Sessions Judge shall be subject to confirmation by the Sessions Judge *or Additional Sessions Judge.*

Sentences which Magistrates may pass.

32. (*1*) The Courts of Magistrates may pass the following sentences, namely:—

(*a*) Courts of Presidency Magistrates and of Magistrates of the first class:
- Imprisonment for a term not exceeding two years, including such solitary confinement as is authorised by law;
- Fine not exceeding one thousand rupees;
- Whipping.

(*b*) Courts of Magistrates of the second class:
- Imprisonment for a term not exceeding six months, including such solitary confinement as is authorised by law;
- Fine not exceeding two hundred rupees;
- Whipping.

(*c*) Courts of Magistrates of the third class:
- Imprisonment for a term not exceeding one month;
- Fine not exceeding fifty rupees.

(2) The Court of any Magistrate may pass any lawful sentence, combining any of the sentences which it is authorised by law to pass.

(3) No Court of any Magistrate of the second class shall pass a sentence of whipping unless *it* is specially empowered in this behalf by the Local Government.

Power of Magistrates to sentence to imprisonment in default of fine.

33. (*1*) The Court of any Magistrate may award such term of imprisonment in default of payment of fine as is authorised by law in case of such default:

Provided that—

(*a*) the term is not in excess of the Magistrate's powers under this Code:

Proviso as to certain cases.

(*b*) in *any* case decided by a Magistrate where imprisonment has been awarded as part of the substantive sentence the period of imprisonment awarded in default of payment of the fine *shall not* exceed one-fourth of the period of imprisonment which such Magistrate is competent to inflict as punishment for the offence otherwise than as imprisonment in default of payment of the fine.

(2) The imprisonment awarded under this section may be in addition to a substantive sentence of imprisonment for the maximum term awardable by the Magistrate under section 32.

Higher powers of certain District Magistrates.

34. The Court of a District Magistrate, specially empowered under section 30, may pass any sentence authorised by law, except a sentence of death or of transportation for a term exceeding seven years or imprisonment for a term exceeding seven years; but any sentence of imprisonment for a term exceeding four years, and any sentence of transportation, shall be subject to confirmation by the Sessions Judge *or Additional Sessions Judge.*

Sentence in cases of conviction of several offences at one trial.

35. (*1*) When a person is convicted, at one trial of two or more distinct offences, the Court may sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments, when consisting of imprisonment or transportation, to commence the one after the expiration of the other in such order as the Court may direct.

The Code of Criminal Procedure, 1898.

(Part II.—Constitution and Powers of Criminal Courts and Offices.—Chapter III.—Powers of Courts.—Sections 36-41.—Part III.—General Provisions.—Chapter IV.—Of Aid and Information to the Magistrates, the Police and persons making arrests.—Section 42.)

(2) It shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided as follows:—

(*a*) in no case shall such person be sentenced to imprisonment for a longer period than fourteen years:

Maximum term of punishment.

(*b*) if the case is tried by a Magistrate (other than a Magistrate acting under section 34), the aggregate punishment shall not exceed twice the amount of punishment which he is, in the exercise of his ordinary jurisdiction, competent to inflict.

(3) For the purpose of confirmation or appeal aggregate sentences passed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

EXPLANATION.—Separable offences which come within the provisions of section 71 of the Indian Penal Code are not distinct offences within the meaning of this section.

XLV of 1860.

Illustrations.

(a) A takes part in a riot in the course and in the prosecution of the common object of which B inflicts grievous hurt on C. A has not committed distinct offences, within the meaning of this section, but B has.

(b) A breaks into a house with intent to commit theft and steals property therein. A has not committed distinct offences.

C.—Ordinary and Additional Powers.

36. All District Magistrates, Subdivisional Magistrates and Magistrates of the first, second and third classes have the powers hereinafter respectively conferred upon them and specified in the third schedule. Such powers are called their "ordinary powers."

Ordinary powers of Magistrates.

37. In addition to his ordinary powers, any Subdivisional Magistrate or any Magistrate of the first, second or third class may be invested by the Local Government or the District Magistrate, as the case may be, with any powers specified in the fourth schedule as powers with which he may be invested by the Local Government or the District Magistrate.

Additional powers conferrible on Magistrates.

38. The power conferred on the District Magistrate by section 37 shall be exercised subject to the control of the Local Government.

Control of District Magistrate's investing power.

D.—Conferment, Continuance and Cancellation of Powers.

39. (1) In conferring powers under this Code the Local Government may, by order, empower persons specially by name or in virtue of their office, or classes of officials generally by their official titles.

Mode of conferring powers.

(2) Every such order shall take effect from the date on which it is communicated to the person so empowered.

40. Whenever any person holding an office in the service of Government who has been invested with any powers under this Code throughout any local area is transferred to an equal or higher office of the same nature within a like local area under the same Local Government, he shall, unless the Local Government otherwise directs, or has otherwise directed, continue to exercise the same powers in the local area to which he is so transferred.

Continuance of powers of officers transferred.

ILLUSTRATION.

A, a Magistrate, is temporarily appointed to the Secretariat. When he reverts to his appointment as a Magistrate in the same or another district he may exercise the powers of a Magistrate without fresh authorisation.

41. (1) The Local Government may withdraw all or any of the powers conferred under this Code on any person by it or by any officer subordinate to it.

Powers may be cancelled.

(2) *Any powers conferred by the District Magistrate may in like manner be withdrawn by the District Magistrate.*

PART III.

GENERAL PROVISIONS.

CHAPTER IV.

OF AID AND INFORMATION TO THE MAGISTRATES, THE POLICE AND PERSONS MAKING ARRESTS.

42. Every person is bound to assist a Magistrate or police-officer reasonably demanding his aid, whether within or without the presidency-towns,—

Public when to assist Magistrates and police.

(*a*) in the taking of any other person whom such Magistrate or police-officer is authorised to arrest;

The Code of Criminal Procedure, 1898.

(Part III.—General Provisions.—Chapter IV.—Of Aid and Information to the Magistrates, the Police and persons making arrests.—Sections 43-45.)

(*b*) in the prevention of a breach of the peace, or of any injury attempted to be committed to any railway, canal, telegraph or public property; or

(*c*) in the suppression of a riot or an affray, *or the dispersion of an unlawful assembly, or an assembly of five or more persons likely to cause a disturbance of the public peace.*

Aid to person, other than police-officer, executing warrant.

43. When a warrant is directed to a person other than a police-officer, any other person may aid in the execution of such warrant, if the person to whom the warrant is directed be near at hand and acting in the execution of the warrant.

Public to give information of certain offences.

44. (*1*) Every person, whether within or without the presidency-towns aware of the commission of, or of the intention of any other person to commit, any offence punishable under the following sections of the Indian Penal Code, (namely), 121, 121A, 122, 123, 124, 124A, 125, 126, 130, 143, 144, 145, 147, 148, 302, 303, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 456, 457, 458, 459 and 460, shall, in the absence of reasonable excuse, the burden of proving which shall lie upon the person so aware, forthwith give information to the nearest Magistrate or police-officer of such commission or intention. XLV of 1860.

(*2*) *For the purposes of this section the term "offence" includes any act which would constitute an offence if committed in British India.*

Village-headmen, accountants, land-holders and others bound to report certain matters.

45. (1) Every village-headman, village-accountant, village-watchman, village-police-officer, owner or occupier of land, and the agent of any such owner or occupier, and every officer employed in the collection of revenue or rent of land on the part of Government or the Court of Wards, shall forthwith communicate to the nearest Magistrate or to the officer in charge of the nearest police-station, whichever is the nearer, any information which he may obtain respecting—

(*a*) the permanent or temporary residence of any notorious receiver or vendor of stolen property in any village of which he is headman, accountant, watchman or police-officer, or in which he owns or occupies land, or is agent, or collects revenue or rent;

(*b*) the resort to any place within, or the passage through, such village of any person whom he knows, or reasonably suspects, to be a thug, robber, escaped convict or proclaimed offender;

(*c*) the commission of, or intention to commit, in or near such village any non-bailable offence or any offence punishable under sections 143, 144, 145, 147 or 148 of the Indian Penal Code; XLV of 1860.

(*d*) the occurrence in or near such village of any sudden or unnatural death or of any death under suspicious circumstances;

(*e*) the commission of, or intention to commit, at any place out of British India near such village any act which, if committed in British India, would be an offence punishable under any of the following sections of the Indian Penal Code, namely,* 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460; XLV of 1860.

(*f*) any matter likely to affect the maintenance of order or the prevention of crime or the safety of person or property respecting which the District Magistrate, by general or special order made with the previous sanction of the Local Government, has directed him to communicate information.

(2) In this section—

(*i*) 'village' includes village-lands; and

(*ii*) the expression 'proclaimed offender' includes any person proclaimed as an offender by any Court or authority established or continued by the Governor General in Council in any part of India in respect of any act which, if committed in British India, would be punishable under any of the following sections of the Indian Penal Code, namely, 302, 304, 382, 392, 393, 394, 395, 396, 397, 398, 399, 402, 435, 436, 449, 450, 457, 458, 459 and 460. XLV of 1860.

Appointment of village-headmen by District Magistrate in certain cases for purposes of this section.

(3) Subject to rules in this behalf to be made by the Local Government, the District Magistrate may from time to time appoint one or more persons to be village-headmen for the purposes of this section in any village for which there is no such headman appointed under any other law. Act X of 1882 S. 45A.

The Code of Criminal Procedure, 1898.

Part III.—General Provisions.—Chapter V.—Of Arrest, Escape and Retaking.—Sections 46-54.)

CHAPTER V.

OF ARREST, ESCAPE AND RETAKING.

A.—Arrest generally.

46. (*1*) In making an arrest the police-officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

Arrest how made.

(*2*) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest.

Resisting endeavour to arrest.

(*3*) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death, or with transportation for life.

47. If any person acting under a warrant of arrest, or any police-officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within, any place, the person residing in, or being in charge of, such place shall, on demand of such person acting as aforesaid or such police-officer, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

Search of place entered by person sought to be arrested.

48. If ingress to such place cannot be obtained under section 47, it shall be lawful in any case for a person acting under a warrant and in any case in which a warrant may issue, but cannot be obtained without affording the person to be arrested an opportunity of escape, for a police-officer to enter such place and search therein, and in order to effect an entrance into such place, to break open any outer or inner door or window of any house or place, whether that of the person to be arrested or of any other person, if after notification of his authority and purpose, and demand of admittance duly made, he cannot otherwise obtain admittance:

Procedure where ingress not obtainable.

Provided that, if any such place is an apartment in the actual occupancy of a woman (not being the person to be arrested) who, according to custom, does not appear in public, such person or police-officer shall, before entering such apartment, give notice to such woman that she is at liberty to withdraw, and shall afford her every reasonable facility for withdrawing, and may then break open the apartment and enter it.

Breaking open zanáná.

49. Any police-officer or other person authorised to make an arrest may break open any outer or inner door or window of any house or place in order to liberate himself or any other person who, having lawfully entered for the purpose of making an arrest, is detained therein.

Power to break open doors and windows for purposes of liberation.

50. The person arrested shall not be subjected to more restraint than is necessary to prevent his escape.

No unnecessary restraint.

51. Whenever a person is arrested by a police-officer under a warrant which does not provide for the taking of bail, or under a warrant which provides for the taking of bail but the person arrested cannot furnish bail, and

Search of arrested persons.

whenever a person is arrested without warrant, or by a private person under a warrant, and cannot legally be admitted to bail, or is unable to furnish bail,

the officer making the arrest or, when the arrest is made by a private person, the police-officer to whom he makes over the person arrested, may search such person, and place in safe custody all articles, other than necessary wearing-apparel, found upon him.

52. Whenever it is necessary to cause a woman to be searched, the search shall be made by another woman, with strict regard to decency.

Mode of searching women.

53. The officer or other person making any arrest under this Code may take from the person arrested any offensive weapons which he has about his person, and shall deliver all weapons so taken to the Court or officer before which or whom the officer or person making the arrest is required by this Code to produce the person arrested.

Power to seize offensive weapons.

B.—Arrest without Warrant.

54. (*1*) Any police-officer may, without an order from a Magistrate and without a warrant, arrest—

When police may arrest without warrant.

first—any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned;

secondly—any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

thirdly—any person who has been proclaimed as an offender either under this Code or by order of the Local Government;

fourthly—any person in whose possession anything is found which may reasonably be

The Code of Criminal Procedure, 1898.

(Part III.—General Provisions.—Chapter V.—Of Arrest, Escape and Retaking.—Sections 55-59.)

suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;

fifthly—any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody;

sixthly—any person reasonably suspected of being a deserter from Her Majesty's Army or Navy or of belonging to Her Majesty's Indian Marine Service and being illegally absent from that service; and

seventhly—any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of British India, which, if committed in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in British India.

44 & 45 Vict., c. 69.

eighthly—any person committing a breach of the terms of police supervision as defined by section 565.

(2) This section applies to the police in the towns of Calcutta and Bombay.

(3) The Local Government may direct that the provisions of this Code relating to arrests without warrant shall apply to village-policemen or chaukidars, with any modifications that it may think fit.

Arrest of vagabonds, habitual robbers, etc.

55. (1) Any officer in charge of a police-station may, in like manner, arrest or cause to be arrested—

(a) any person found taking precautions to conceal his presence within the limits of such station, under circumstances which afford reason to believe that he is taking such precautions with a view to committing a cognizable offence; or

(b) any person within the limits of such station who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself; or

(c) any person who is by repute an habitual robber, house-breaker or thief, or an habitual receiver of stolen property knowing it to be stolen, or who by repute habitually commits extortion or in order to the committing of extortion habitually puts or attempts to put persons in fear of injury.

(2) This section applies to the police in the towns of Calcutta and Bombay.

Procedure when police-officer deputes subordinate to arrest without warrant.

56. (1) When any officer in charge of a police-station requires any officer subordinate to him to arrest without a warrant (otherwise than in his presence) any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an order in writing, specifying the person to be arrested and the offence for which the arrest is to be made.

(2) This section applies to the police in the towns of Calcutta and Bombay.

Refusal to give name and residence.

57. (1) When any person who in the presence of a police-officer has committed or has been accused of committing a non-cognizable offence refuses, on demand of such officer, to give his name and residence, or gives a name or residence which such officer has reason to believe to be false, he may be arrested by such officer in order that his name or residence may be ascertained.

(2) When the true name and residence of such person have been ascertained, he shall be released on his executing a bond with one or more fit and proper sureties resident in British India to appear before a Magistrate if so required.

(3) Should his true name and residence not be ascertained within twenty-four hours from the time of arrest or should he fail to execute the bond or furnish sureties, he shall forthwith be forwarded to the nearest Magistrate having jurisdiction.

Pursuit of offenders into other jurisdictions.

58. A police-officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest under this chapter, pursue such person into any place in British India.

Arrest by private persons.

59. (1) Any private person may arrest any person who, in his view, commits a non-bailable and cognizable offence, or who has been proclaimed as an offender;

Procedure on such arrest.

and shall, without unnecessary delay, make over any person so arrested to a police-officer, or, in the absence of a police-officer, take such person to the nearest police-station.

(2) If there is reason to believe that such person comes under the provisions of section 54, a police-officer shall re-arrest him.

(3) If there is reason to believe that he has committed a non-cognizable offence, and he refuses on the demand of a police-officer to give his name and residence, or gives a name or residence

The Code of Criminal Procedure, 1898.

(Part III.—General Provisions.—Chapter V.—Of Arrest, Escape and Retaking.—Sections 60-67.—Chapter VI.—Of Processes to compel Appearance.—Sections 68-70.)

which such officer has reason to believe to be false, he shall be dealt with under the provisions of section 57. If there is no *sufficient* reason to believe that he has committed any offence, he shall be at once discharged.

Person arrested to be taken before Magistrate or officer in charge of police-station.

60. A police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police-station.

Person arrested not to be detained more than twenty-four hours.

61. (*1*) No police-officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

(*2*) *The provisions of this section refer only to detention by a police-officer enrolled under Act V of 1861.*

Police to report apprehensions.

62. Officers in charge of police-stations shall report to the District Magistrate, or, if he so directs, to the Subdivisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise.

Discharge of person apprehended.

63. No person who has been arrested by a police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate.

Offence committed in Magistrate's presence.

64. When any offence is committed in the presence of a Magistrate within the local limits of his jurisdiction, he may himself arrest or order any person to arrest the offender, and may thereupon, subject to the provisions herein contained as to bail, commit the offender to custody.

Arrest by or in presence of Magistrate.

65. Any Magistrate may at any time arrest or direct the arrest, in his presence, within the local limits of his jurisdiction, of any person for whose arrest he is competent at the time and in the circumstances to issue a warrant.

Power, on escape, to pursue and retake.

66. If a person in lawful custody escapes or is rescued, the person from whose custody he escaped or was rescued may immediately pursue and arrest him in any place in British India.

Provisions of sections 47, 48 and 49 to apply to arrests under section 66.

67. The provisions of sections 47, 48 and 49 shall apply to arrests under section 66, although the person making any such arrest is not acting under a warrant and is not a police-officer having authority to arrest.

CHAPTER VI.

OF PROCESSES TO COMPEL APPEARANCE.

A.—Summons.

Form of summons.

68. (*1*) Every summons issued by a Court under this Code shall be in writing, in duplicate, signed and sealed by the presiding officer of such Court, or by such other officer as the High Court may, from time to time, by rule, direct.

Summons by whom served.

(*2*) Such summons shall be served by a police-officer, or, subject to such rules as the Local Government may prescribe in this behalf, by an officer of the Court issuing it *or other public servant*.

(*3*) This section applies to the police in the towns of Calcutta and Bombay.

Summons how served.

69. (*1*) The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.

Signature of receipt for summons.

(*2*) Every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

(*3*) *Service of a summons on an incorporated company or other body corporate may be effected by serving it on the secretary, local manager or other principal officer of the corporation, or by registered post letter addressed to the Chief Officer of the corporation in British India. In such case the service shall be deemed to have been effected when the letter would arrive in ordinary course of post.*

Service when person summoned cannot be found.

70. Where the person summoned cannot by the exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family, or, in a presidency-town, with his servant residing with him; and the person with whom the summons is so left shall, if so required by the serving officer, sign a receipt therefor on the back of the other duplicate.

The Code of Criminal Procedure, 1898.

(*Part III.—General Provisions.—Chapter VI.—Of Processes to compel Appearance.—Sections 71-79.*)

Procedure when receipt cannot be obtained.

71. If *service in the manner* mentioned in sections 69 and 70 cannot by the exercise of due diligence be obtained, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the summons shall be deemed to have been duly served.

Service on servant of Government or of Railway Company.

72. (*1*) Where the person summoned is in the active service of the Government or of a Railway Company, the Court issuing the summons shall ordinarily send it in duplicate to the head of the office in which such person is employed; and such head shall thereupon cause the summons to be served in manner provided by section 69, and shall return it to the Court *under his signature* with the endorsement required by that section.

(*2*) *Such signature shall be* primâ facie *evidence of due service.*

Service of summons outside local limits.

73. When a Court desires that a summons issued by it shall be served at any place outside the local limits of its jurisdiction, it shall ordinarily send such summons in duplicate to a Magistrate within the local limits of whose jurisdiction the person summoned resides or is, to be there served.

Proof of service in such cases, and when serving officer not present.

74. (*1*) When a summons issued by a Court is served outside the local limits of its jurisdiction, and in any case where the officer who has served a summons is not present at the hearing of the case, an affidavit, purporting to be made before a Magistrate, that such summons has been served, and a duplicate of the summons purporting to be endorsed (in manner provided by section 69 or section 70) by the person to whom it was delivered or tendered or with whom it was left, shall be admissible in evidence, and the statements made therein shall be deemed to be correct unless and until the contrary is proved.

(*2*) The affidavit mentioned in this section may be attached to the duplicate of the summons and returned to the Court.

B.—Warrant of Arrest.

Form of warrant of arrest.

75. (*1*) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer, or, in the case of a Bench of Magistrates, by any member of such Bench; and shall bear the seal of the Court.

Continuance of warrant of arrest.

(*2*) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed.

Court may direct security to be taken.

76. (*1*) Any Court issuing a warrant for the arrest of any person may in its discretion direct by endorsement on the warrant that, if such person execute a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(*2*) The endorsement shall state—

(*a*) the number of sureties;

(*b*) the amount in which they and the person for whose arrest the warrant is issued are to be respectively bound; and

(*c*) the time at which he is to attend before the Court.

Recognizance to be forwarded.

(*3*) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

Warrants to whom directed.

77. (*1*) A warrant of arrest shall ordinarily be directed to one or more police-officers, and, when issued by a Presidency Magistrate, shall always be so directed; but any other Court issuing such a warrant may, if its immediate execution is necessary and no police-officer is immediately available, direct it to any other person or persons; and such person or persons shall execute the same.

Warrant to several persons.

(*2*) When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more, of them.

Warrant may be directed to landholders, etc.

78. (*1*) A District Magistrate or Subdivisional Magistrate may direct a warrant to any landholder, farmer or manager of land within his district or subdivision for the arrest of any escaped convict, proclaimed offender or person who has been accused of a non-bailable offence, and who has eluded pursuit.

(*2*) Such landholder, farmer or manager shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued is in, or enters on, his land or farm, or the land under his charge.

(*3*) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police-officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 76.

Warrant directed to police-officer.

79. A warrant directed to any police-officer may also be executed by any other police-officer whose name is endorsed upon the warrant by the officer to whom it is directed or endorsed.

The Code of Criminal Procedure, 1898.

(Part III.—General Provisions.—Chapter VI.—Of Processes to compel Appearance.—Sections 80-87.)

Notification of substance of warrant.

80. The police-officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

Person arrested to be brought before Court without delay.

81. The police-officer or other person executing a warrant of arrest shall (subject to the provisions of section 76 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person.

Where warrant may be executed.

82. A warrant of arrest may be executed at any place in British India.

Warrant forwarded to Magistrate for execution outside jurisdiction.

83. (*1*) When a warrant is to be executed outside the local limits of the jurisdiction of the Court issuing the same, such Court may, instead of directing such warrant to a police-officer, forward the same by post or otherwise to any Magistrate or Commissioner *or District Superintendent* of Police within the local limits of whose jurisdiction it is to be executed.

(*2*) The Magistrate or Commissioner *or District Superintendent* to whom such warrant is so forwarded shall endorse his name thereon, and, if practicable, cause it to be executed *in manner hereinbefore provided* within the local limits of his jurisdiction.

(*3*) *This section applies to the police in the towns of Calcutta and Bombay.*

Warrant directed to police-officer for execution outside jurisdiction.

84. (*1*) When a warrant directed to a police-officer is to be executed beyond the local limits of the jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to a Magistrate or to a police-officer not below the rank of an officer in charge of a station, within the local limits of whose jurisdiction the warrant is to be executed.

(*2*) Such Magistrate or police-officer shall endorse his name thereon, and such endorsement shall be sufficient authority to the police-officer to whom the warrant is directed to execute the same within such limits, and the local police shall, if so required, assist such officer in executing such warrant.

(*3*) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police-officer within the local limits of whose jurisdiction the warrant is to be executed will prevent such execution, the police-officer to whom it is directed may execute the same without such endorsement in any place beyond the local limits of the jurisdiction of the Court which issued it.

(*4*) *This* section applies to the police in the towns of Calcutta and Bombay.

Procedure on arrest of person against whom warrant issued.

85. (*1*) When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within twenty miles of the place of arrest, or is nearer than the Magistrate or Commissioner *or District Superintendent* of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 76, be taken before such Magistrate or Commissioner *or District Superintendent*.

(*2*) *This section applies to the police in the towns of Calcutta and Bombay.*

Procedure by Magistrate before whom person arrested is brought.

86. (*1*) Such Magistrate or Commissioner *or District Superintendent* shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court:

Provided that if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, Commissioner *or District Superintendent*, or a direction has been endorsed under section 76 on the warrant and such person is ready and willing to give the security required by such direction, the Magistrate, Commissioner *or District Superintendent* shall take such bail or security, as the case may be, and forward the bond to the Court which issued the warrant.

(*2*) Nothing in this section shall be deemed to prevent a police-officer from taking security under section 76.

(*3*) *This section applies to the police in the towns of Calcuta and Bombay.*

C.—Proclamation and Attachment.

Proclamation for person absconding.

87. (*1*) If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

(*2*) The proclamation shall be published as follows:—

(*a*) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;

(*b*) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides,

The Code of Criminal Procedure, 1898.

(Part III.—General Provisions.—Chapter VI.—Of Processes to compel Appearance. —Sections 88-91.)

or to some conspicuous place of such town or village; and

(c) a copy thereof shall be affixed to some conspicuous part of the Court-house.

(3) A statement *in writing* by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day.

Attachment of property of person absconding.

88. (1) The Court may, after issuing a proclamation under section 87, order the attachment of any property, moveable or immoveable, or both, belonging to the proclaimed person.

(2) Such order shall authorise the attachment of any property belonging to such person within the district in which it is made; and it shall authorise the attachment of any property belonging to such person without such district when endorsed by the District Magistrate or Chief Presidency Magistrate within whose district such property is situate.

(3) If the property ordered to be attached be debts or other moveable property, the attachment under this section shall be made—

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(4) If the property ordered to be attached be immoveable, the attachment under this section shall, in the case of land paying revenue to Government, be made through the Collector of the district in which the land is situate, and in all other cases—

(e) by taking possession; or

(f) by the appointment of a receiver; or

(g) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(h) by all or any two of such methods, as the Court thinks fit.

(5) If the property ordered to be attached consists of live stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case, the proceeds of the sale shall abide the order of the Court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under Chapter XXXVI of the Code of Civil Procedure. XVI of 1882.

(7) If the proclaimed person does not appear within the time specified in the proclamation, the property under attachment shall be at the disposal of Government; but it shall not be sold until the expiration of six months from the date of the attachment, unless it is subject to speedy and natural decay, or the Court considers that the sale would be for the benefit of the owner, in either of which cases the Court may cause it to be sold whenever it thinks fit.

(8) If any third person makes a claim to the property ordered to be attached, or any part of it, the Court may investigate and determine the possession in manner provided by section 278 of the Code of Civil Procedure. XIV of 1882.

Restoration of attached property.

89. If, within two years from the date of the attachment, any person whose property is or has been at the disposal of Government, under sub-section (7) of section 88, appears voluntarily or is apprehended and brought before the Court by whose order the property was attached, and proves to the satisfaction of such Court that he did not abscond or conceal himself for the purpose of avoiding execution of the warrant, and that he had not such notice of the proclamation as to enable him to attend within the time specified therein, such property, or, if the same has been sold, the nett proceeds of the sale, or if part only thereof has been sold, the nett proceeds of the sale and the residue of the property, shall, after satisfying thereout all costs incurred in consequence of the attachment, be delivered to him.

D.—Other Rules regarding Processes.

Issue of warrant in lieu of, or in addition to, summons.

90. A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person other than a juror or assessor, issue, after recording its reasons in writing, a warrant for his arrest—

(a) if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or

(b) if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

Power to take bond for appearance.

91. When any person for whose appearance or arrest the officer presiding in any Court is empowered to issue a summons or warrant is present

The Code of Criminal Procedure, 1898.

(Part III.—General Provisions.—Chapter VI.—Of Processes to compel Appearance. —Sections 92-93. Chapter VII.—Of Processes to compel the production of Documents and other Moveable Property, and for the Discovery of Persons wrongfully confined.—Sections 94-98.)

in such Court, such officer may require such person to execute a bond with or without sureties for his appearance in such Court.

Arrest on breach of bond for appearance.

92. When any person who is bound by any bond taken under this Code to appear before a Court does not so appear, the officer presiding in such Court may issue a warrant directing that such person be arrested and produced before him.

Provisions of this chapter generally applicable to summonses and warrants of arrest.

93. The provisions contained in this Chapter relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

CHAPTER VII.

OF PROCESSES TO COMPEL THE PRODUCTION OF DOCUMENTS AND OTHER MOVEABLE PROPERTY, AND FOR THE DISCOVERY OF PERSONS WRONGFULLY CONFINED.

A.—Summons to produce.

Summons to produce document or other thing.

94. (*1*) Whenever any Court, or, in any place beyond the limits of the towns of Calcutta and Bombay, any officer in charge of a police-station, considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(*2*) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he cause such document or thing to be produced instead of attending personally to produce the same.

(*3*) Nothing in this section shall be deemed to affect the Indian Evidence Act, 1872, sections 123 and 124, or to apply to a letter, post-card, telegram or other document *or thing* in the custody of the Postal or Telegraph authorities. 1872.

Procedure as to letters and telegrams.

95. (*1*) If any document, *parcel or thing* in such custody is, in the opinion of any District Magistrate, Chief Presidency Magistrate, High Court or Court of Session, wanted for the purpose of any investigation, inquiry, trial or other proceeding under this Code, such Magistrate or Court may require the Postal or Telegraph authorities, as the case may be, to deliver such document, *parcel or thing* to such person as such Magistrate or Court directs.

(*2*) If any such document, parcel *or thing* is, in the opinion of any other Magistrate, or of any Commissioner of Police or District Superintendent of Police, wanted for any such purpose, he may require the Postal or Telegraph Department, as the case may be, to cause search to be made for and to detain such document, pending the orders of any such District Magistrate, Chief Presidency Magistrate or Court.

B.—Search-warrants.

When search-warrant may be issued.

96. (*1*) Where any Court has reason to believe that a person to whom a summons or order under section 94 or a requisition under section 95, *sub-section* (*1*) has been or might be addressed will not or would not produce the document or other thing as required by such summons or requisition,

or where such document or other thing is not known to the Court to be in the possession of any person,

or where the Court considers that the purposes of any inquiry, trial or other proceeding under this Code will be served by a general search or inspection,

it may issue a search-warrant; and the person to whom such warrant is directed may search or inspect in accordance therewith and the provisions hereinafter contained.

(*2*) Nothing herein contained shall authorise any Magistrate other than a District Magistrate or Chief Presidency Magistrate to grant a warrant to search for a document, *parcel or other thing* in the custody of the Postal or Telegraph authorities.

Power to restrict warrant.

97. The Court may, if it thinks fit, specify in the warrant the particular place or part thereof to which only the search or inspection shall extend; and the person charged with the execution of such warrant shall then search or inspect only the place or part so specified.

Search of house suspected to contain stolen property, forged documents, etc.

98. (*1*) If a District Magistrate, Subdivisional Magistrate, Presidency Magistrate or Magistrate of the first class, upon information and after such inquiry as he thinks necessary, has reason to believe that any place is used for the deposit or sale of stolen property,

or for the deposit or sale or manufacture of forged documents, false seals or counterfeit stamps or coin, or instruments or materials for counterfeiting coin or stamps or for forging,

or that any forged documents, false seals or counterfeit stamps or coin, or instruments or materials used for counterfeiting coin or stamps

The Code of Criminal Procedure, 1898.

(Part III.—General Provisions.—Chapter VII.—Of Processes to compel the production of Documents and other Moveable Property, and for the Discovery of Persons wrongfully confined.—Sections 99-102.)

or for forging, are kept or deposited in any place,

he may by his warrant authorise any police-officer above the rank of a constable—

(*a*) to enter, with such assistance as may be required, such place, and

(*b*) to search the same in manner specified in the warrant, and

(*c*) to take possession of any property, documents, seals, stamps or coins therein found which he reasonably suspects to be stolen, unlawfully obtained, forged, false or counterfeit, and also of any such instruments and materials as aforesaid, and

(*d*) to convey such property, documents seals, stamps, coins, instruments or materials before a Magistrate, or to guard the same on the spot until the offender is taken before a Magistrate, or otherwise to dispose thereof in some place of safety, and

(*e*) to take into custody and carry before a Magistrate every person found in such place who appears to have been privy to the deposit, sale or manufacture or keeping of any such property, documents, seals, stamps, coins, instruments or materials, knowing or having reasonable cause to suspect the said property to have been stolen or otherwise unlawfully obtained, or the said documents, seals, stamps, coins, instruments or materials to have been forged, falsified or counterfeited, or the said instruments or materials to have been or to be intended to be used for counterfeiting coin or stamps or for forging.

(2) The provisions of this section with respect to—

(*a*) counterfeit coin,

(*b*) coin suspected to be counterfeit, and

(*c*) instruments or materials for counterfeiting coin,

shall, so far as they can be made applicable, apply, respectively, to—

(*a*) pieces of metal made in contravention of the Metal Tokens Act, 1889, or brought into British India in contravention of any notification for the time being in force under section 19 of the Sea Customs Act, 1878,

1 of 1889.

VIII of 1878.

(*b*) pieces of metal suspected to have been so made or to have been so brought into British India or to be intended to be issued in contravention of the former of those Acts, and

(*c*) instruments or materials for making pieces of metal in contravention of that Act.

Disposal of things found in search beyond jurisdiction.

99. When, in the execution of a search-warrant at any place beyond the local limits of the jurisdiction of the Court which issued the same, any of the things for which search is made are found, such things, together with the list of the same prepared under the provisions hereinafter contained, shall be immediately taken before the Court issuing the warrant, unless such place is nearer to the Magistrate having jurisdiction therein than to such Court, in which case the list and things shall be immediately taken before such Magistrate; and, unless there be good cause to the contrary, such Magistrate shall make an order authorising them to be taken to such Court.

C.—Discovery of persons wrongfully confined.

Search for persons wrongfully confined.

100. If any Presidency Magistrate, Magistrate of the first class or Subdivisional Magistrate has reason to believe that any person is confined under such circumstances that the confinement amounts to an offence, he may issue a search-warrant, and the person to whom such warrant is directed may search for the person so confined; and such search shall be made in accordance therewith, and the person, if found, shall be immediately taken before a Magistrate, who shall make such order as in the circumstances of the case seems proper.

D.—General Provisions relating to Searches.

Direction, etc., of search-warrants.

101. The provisions of sections 43, 75, 77, 79, 82, 83 and 84 shall, so far as may be, apply to all search-warrants issued under section 96, section 98 or section 100.

Persons in charge of closed place to allow search.

102. (*1*) Whenever any place liable to search or inspection under this chapter is closed, any person residing in, or being in charge of, such place shall, on demand of the officer or other person executing the warrant, and on production of the warrant, allow him free ingress thereto, and afford all reasonable facilities for a search therein.

(*2*) If ingress into such place cannot be so obtained, the officer or other person executing the warrant may proceed in manner provided by section 48.

(*3*) *Where any person in or about such place is reasonably suspected of concealing about his person any article for which search should be made, such person may be searched in manner provided by sections 51 and 52.*

The Code of Criminal Procedure, 1898.

(Part III.—General Provisions.—Chapter VII.—Of Processes to compel the production of Documents and other Moveable Property, and for the Discovery of Persons wrongfully confined.—Sections 103-105. Part IV.—Prevention of Offences.—Chapter VIII.—Of Security for keeping the Peace and for Good Behaviour.—Sections 106-109.)

Search to be made in presence of witnesses.

103. (*1*) Before making a search under this chapter, the officer or other person about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search.

(*2*) The search shall be made in their presence, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this section shall be required to attend the Court as a witness of the search unless specially summoned by it.

Occupant of place searched may attend.

(*3*) The occupant of the place searched, or some person in his behalf, shall, in every instance, be permitted to attend during the search, and a copy of the list prepared under this section, signed by the said witnesses, shall be delivered to such occupant or person at his request.

E.—Miscellaneous.

Power to impound document, etc., produced.

104. Any Court may, if it thinks fit, impound any document or other thing produced before it under this Code.

Magistrate may direct search in his presence.

105. Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search-warrant.

PART IV.

PREVENTION OF OFFENCES.

CHAPTER VIII.

OF SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR.

A.—Security for keeping the Peace on Conviction.

Security for keeping the peace on conviction.

106. (*1*) Whenever any person accused of rioting, assault or other breach of the peace, or of abetting the same, or of assembling armed men or taking other unlawful measures with the evident intention of committing the same, or any person accused of committing criminal intimidation is convicted of such offence before a High Court, a Court of Session or the Court of a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class,

and such Court is of opinion that it is necessary to require such person to execute a bond for keeping the peace,

such Court may, at the time of passing sentence on such person, order him to execute a bond for a sum proportionate to his means, with or without sureties, for keeping the peace during such period, not exceeding three years, as it thinks fit to fix.

(*2*) If the conviction is set aside on appeal or otherwise, the bond so executed shall become void.

(*3*) *An order under this section may also be made by an Appellate Court or by the High Court when exercising its powers of revision.*

B.—Security for keeping the Peace in other cases and Security for Good Behaviour.

Security for keeping the peace in other cases.

107. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information that any person *within the local limits of such Magistrate's jurisdiction* is likely to commit a breach of the peace, *or that is likely to disturb the public tranquillity*, or to do any wrongful act that may probably occasion a breach of the peace, the Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for keeping the peace for such period not exceeding one year as the Magistrate thinks fit to fix.

Procedure of Magistrate, etc., not empowered to act under section 107.

108. (*1*) When any Magistrate not empowered to proceed under section 107, or a Court of Session or High Court, has reason to believe that any person is likely to commit a breach of the peace or to do any wrongful act that may probably occasion a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by detaining such person in custody, such Magistrate or Court may issue a warrant for his arrest (if he is not already in custody or before the Court), and may send him before a Magistrate empowered to deal with the case under section 107.

(*2*) A Magistrate before whom a person is sent under this section may in his discretion detain such person in custody until the completion of the inquiry hereinafter prescribed.

Security for good behaviour from vagrants and suspected persons.

109. Whenever a Presidency Magistrate, District Magistrate, Sub-divisional Magistrate or Magistrate of the first class receives information—

(*a*) that any person is taking precautions to conceal his presence within the local limits of such Magistrate's jurisdiction, and that there is reason to believe that such person is taking such precautions

The Code of Criminal Procedure, 1898.

(Part IV.—Prevention of Offences.—Chapter VIII.—Of Security for keeping the Peace and for Good Behaviour.—Sections 110-117.)

with a view to committing *any cognizable* offence, or

(*b*) that there is within such limits a person who has no ostensible means of subsistence, or who cannot give a satisfactory account of himself,

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with sureties, for his good behaviour for such period not exceeding twelve months as the Magistrate thinks fit to fix.

Security for good behaviour from habitual offenders.

110. Whenever a Presidency Magistrate, District Magistrate, or Subdivisional Magistrate or a Magistrate of the first class specially empowered in this behalf by the Local Government receives information that any person within the local limits of his jurisdiction—

(*a*) *is by habit a robber, house-breaker or thief, or*

(*b*) *is by habit a receiver of stolen property knowing the same to have been stolen, or*

(*c*) *habitually protects or harbours thieves or aids in the concealment or disposal of stolen property, or*

(*d*) *habitually commits mischief or extortion or attempts so to do, or*

(*e*) *in order to the committing of extortion habitually puts or attempts to put persons in fear of injury, or*

(*f*) *is a character so desperate and dangerous as to render his being at large without security hazardous to the community,*

such Magistrate may, in manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behaviour for such period not exceeding three years as the Magistrate thinks fit to fix.

Proviso as to European vagrants.

111. The provisions of sections 109 and 110 do not apply to European British subjects in cases where they may be dealt with under the European Vagrancy Act, 1874.

IX of 1874.

Order to be made.

112. When a Magistrate acting under section 107, section 109 or section 110 deems it necessary to require any person to show cause under such section, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

Procedure in respect of person present in Court.

113. If the person in respect of whom such order is made is present in Court, it shall be read over to him, or, if he so desires, the substance thereof shall be explained to him.

Summons or warrant in case of person not so present.

114. If such person is not present in Court, the Magistrate shall issue a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the Court:

Provided that whenever it appears to such Magistrate, upon the report of a police-officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

Copy of order under section 112 to accompany summons or warrant.

115. Every summons or warrant issued under section 114 shall be accompanied by a copy of the order made under section 112, and such copy shall be delivered by the officer serving or executing such summons or warrant to the person served with, or arrested under, the same.

Power to dispense with personal attendance.

116. The Magistrate may, if he sees sufficient cause, dispense with the personal attendance of any person called upon to show cause why he should not be ordered to execute a bond for keeping the peace, and may permit him to appear by a pleader.

Inquiry as to truth of information.

117. (*1*) When an order under section 112 has been read or explained under section 113 to a person present in Court, or when any person appears or is brought before a Magistrate in compliance with, or in execution of, a summons or warrant issued under section 114, the Magistrate shall proceed to inquire into the truth of the information upon which he has acted, and to take such further evidence as may appear necessary.

(*2*) Such inquiry shall be made, as nearly as may be practicable where the order requires security for keeping the peace, in the manner hereinafter prescribed for conducting trials *and recording evidence* in summons-cases; and, where the order requires security for good behaviour, in the manner hereinafter prescribed for conducting trials *and recording evidence* in warrant cases, except that no charge need be framed.

(*3*) For the purposes of this section the fact that a person is an habitual offender may be proved by evidence of general repute or otherwise.

The Code of Criminal Procedure, 1898.

(Part IV.—Prevention of Offences.—Chapter VIII.—Of Security for keeping the Peace and for Good Behaviour.—Sections 118-123.)

(4) Where two or more persons have been associated together in the matter under inquiry they may be dealt with in the same or separate inquiries as the Magistrate shall think fit.

Order to give security.

118. (1) If, upon such inquiry, it is proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, with or without sureties, the Magistrate shall *subject to the provisions of sub-section* (2) make an order accordingly:

Provided—

first—that no person shall be ordered to give security of a nature different from, or of an amount larger than, or for a period longer than that specified in the order made under section 112:

secondly—that the amount of every bond shall be fixed with due regard to the circumstances of the case and shall not be excessive:

thirdly—that, when the person in respect of whom the inquiry is made is a minor, the bond shall be executed only by his sureties:

(2) (a) The Magistrate may, if he shall think fit, instead of making such order, order that such person shall be placed under police supervision for a term not exceeding three years:

(b) Any person who has been placed under police supervision by such order may at any time apply to a Chief Presidency Magistrate or District Magistrate to have an order for security for his good behaviour taken in lieu of police supervision.

(c) If such Magistrate is of opinion that the order for police supervision is necessary, he may reject the application, but he shall record his reasons for so doing.

(d) If such Magistrate is of opinion that security may, without hazard to the community or any other person, be taken in lieu of the order for police supervision, he shall make an order for security as herein provided.

Discharge of person informed against.

119. If, on an enquiry under section 117, it is not proved that it is necessary for keeping the peace or maintaining good behaviour, as the case may be, that the person in respect of whom the inquiry is made should execute a bond, the Magistrate shall make an entry on the record to that effect, and, if such person is in custody only for the purposes of the inquiry, shall release him, or, if such person is not in custody, shall discharge him.

C.—Proceedings in all cases subsequent to Order to furnish Security.

Commencement of period for which security is required.

120. (1) If any person in respect of whom an order requiring security is made under section 106 or section 118 is, at the time such order is made, sentenced to, or undergoing a sentence of, imprisonment, the period for which such security is required shall commence on the expiration of such sentence.

(2) In other cases such period shall commence on the date of such order.

Contents of bond.

121. The bond to be executed by any such person shall bind him to keep the peace or to be of good behaviour, as the case may be, and in the latter case the commission or attempt to commit, or the abetment of, any offence punishable with imprisonment, wherever it may be committed, is a breach of the bond.

Power to reject sureties.

122. A Magistrate may refuse to accept any surety offered under this chapter, on the ground that for reasons to be recorded by the Magistrate, such surety is an unfit person.

Imprisonment in default of security.

123. (1) If any person ordered to give security under section 106 or section 118 does not give such security on or before the date on which the period for which such security is to be given commences, he shall, except in the case next hereinafter mentioned, be committed to prison, or, if he is already in prison, be detained in prison until such period expires or until within such period he gives the security to the Court or Magistrate who made the order requiring it *or to the officer in charge of the jail in which the person so ordered is detained.*

(2) If the security be tendered to the officer in charge of the jail, he shall forthwith refer the matter to the Court or Magistrate who made the order and shall await the orders of such Court or Magistrate.

Proceedings when to be laid before High Court or Court of Session.

(3) When such person has been ordered by a Magistrate to give security for a period exceeding one year, such Magistrate shall if such person does not give such security as aforesaid, issue a warrant directing him to be detained in prison pending the orders of the Court of Session, or, if such Magistrate be a Presidency Magistrate, pending the orders of the High Court; and the proceedings shall be laid, as soon as conveniently may be, before such Court.

(4) Such Court, after examining such proceedings and requiring any further information or evidence which it thinks necessary, may pass such order on the case as it thinks fit:

The Code of Criminal Procedure, 1898.

(Part IV.—Prevention of Offences.—Chapter VIII.—Of Security for keeping the Peace and for Good Behaviour.—Sections 124-130.—Chapter IX.—Unlawful Assemblies.—Sections 127-130.

Provided that the period (if any) for which any person is imprisoned for failure to give security shall not exceed three years.

Kind of imprisonment.

(5) Imprisonment for failure to give security for keeping the peace shall be simple.

(6) Imprisonment for failure to give security for good behaviour may be rigorous or simple as the Court or Magistrate in each case directs.

Power to release persons imprisoned for failing to give security.

124. (1) Whenever the District Magistrate or a *Chief* Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter, whether by the order of such Magistrate or that of his predecessor in office, or of some subordinate Magistrate, may be released without hazard to the community or to any other person, he may order such person to be discharged *or he may make an order reducing the amount of the security or the number of sureties or the time for which security has been required.*

(2) Whenever the District Magistrate or a *Chief* Presidency Magistrate is of opinion that any person imprisoned for failing to give security under this chapter as ordered by the Court of Session or High Court may be released without such hazard, such Magistrate shall make an immediate report of the case for the orders of the Court of Session or High Court, as the case may be, and such Court may, if it thinks fit, order such person to be discharged.

Power of District Magistrate to cancel any bond for keeping the peace.

125. The District Magistrate may at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace *or for good behaviour* executed under this chapter by order of any Court in his district not superior to his Court *or any order for police supervision under section 118, sub-section (2).*

Discharge of sureties.

126. (1) Any surety for the peaceable conduct or good behaviour of another person may at any time apply to a Presidency Magistrate, District Magistrate, Subdivisional Magistrate or Magistrate of the first class to cancel any bond executed under this chapter within the local limits of his jurisdiction.

(2) On such application being made, the Magistrate shall issue his summons or warrant, as he thinks fit, requiring the person for whom such surety is bound, to appear or to be brought before him.

(3) When such person appears or is brought before the Magistrate, such Magistrate shall cancel the bond, and shall order such person to give, for the unexpired portion of the term of such bond, fresh security of the same description as the original security. Every such order shall, for the purposes of sections 121, 122, 123 and 124, be deemed to be an order made under section 106 or section 118, as the case may be.

CHAPTER IX.

UNLAWFUL ASSEMBLIES.

Assembly to disperse on command of Magistrate or police-officer.

127. (1) Any Magistrate or officer in charge of a police-station may command any unlawful assembly, or any assembly of five or more persons likely to cause a disturbance of the public peace, to disperse; and it shall thereupon be the duty of the members of such assembly to disperse accordingly.

(2) This section applies to the police in the towns of Calcutta and Bombay.

Use of civil force to disperse.

128. If, upon being so commanded, any such assembly does not disperse, or if, without being so commanded, it conducts itself in such a manner as to show a determination not to disperse, any Magistrate or officer in charge of a police-station, whether within or without the presidency-towns, may proceed to disperse such assembly by force, and may require the assistance of any male person, not being an officer or soldier in Her Majesty's Army or a volunteer enrolled under the Indian Volunteers Act, 1869, and acting as such, for the purpose of dispersing such assembly, and, if necessary, arresting and confining the persons who form part of it, in order to disperse such assembly or that they may be punished according to law. XX of 1869.

Use of military force.

129. If any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Magistrate of the highest rank who is present may cause it to be dispersed by military force.

Duty of officer commanding troops required by Magistrate to disperse assembly.

130. (1) When a Magistrate determines to disperse any such assembly by military force, he may require any commissioned or non-commissioned officer in command of any soldiers in Her Majesty's Army or of any volunteers enrolled under the Indian Volunteers Act, 1869 to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law. XX of 1869.

(2) Every such officer shall obey such requisition in such manner as he thinks fit; but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

The Code of Criminal Procedure, 1898.

(Part IV.—Prevention of Offences.—Chapter IX.—Unlawful Assemblies.—Sections 131-132. Chapter X.—Public Nuisances.—Sections 133-134.)

Power of commissioned military officers to disperse assembly.

131. When the public security is manifestly endangered by any such assembly, and when no Magistrate can be communicated with, any commissioned officer of Her Majesty's Army *or Volunteers* may disperse such assembly by military force, and may arrest and confine any persons forming part of it, in order to disperse such assembly or that they may be punished according to law; but if, while he is acting under this section, it becomes practicable for him to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action.

Protection against prosecution for acts done under this chapter.

132. No prosecution against any Magistrate, *or other officer or person above-mentioned*, for any act purporting to be done under this chapter shall be instituted in any Criminal Court, except with the sanction of the Governor General in Council; and—

(*a*) no Magistrate or police-officer acting under this chapter in good faith,

(*b*) no officer acting under section 131 in good faith,

(*c*) no person doing any act in good faith, in compliance with a requisition under section 128 or section 130, *or under section 42*, and

(*d*) no inferior officer, or soldier, or volunteer, doing any act in obedience to any order which he was bound to obey,

shall be deemed to have thereby committed an offence.

CHAPTER X.

PUBLIC NUISANCES.

Conditional order for removal of nuisance.

133. (*1*) Whenever a District Magistrate, a Subdivisional Magistrate or, when empowered by the Local Government in this behalf, a Magistrate of the first class, considers, on receiving a report or other information, and on taking such evidence (if any) as he thinks fit,

that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place, or

that any trade or occupation, or the keeping of any goods or merchandise, by reason of its being injurious to the health or physical comfort of the community, should be suppressed or removed or prohibited, or

that the construction of any building, or the disposal of any substance as likely to occasion conflagration or explosion, should be prevented or stopped, or

that any building is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence its removal, repair or support is necessary, or

that any tank, well or excavation adjacent to any such way or public place should be fenced in such a manner as to prevent danger arising to the public,—

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, substance, tank, well or excavation, within a time to be fixed in the order,

to remove such obstruction or nuisance; or

to suppress or remove such trade or occupation; or

to remove such goods or merchandise; or

to prevent or stop the construction of such building; or

to remove, repair or support it; or

to alter the disposal of such substance; or

to fence such tank, well or excavation, as the case may be; or

to appear before himself or some other Magistrate of the first or second class, at a time and place to be fixed by the order, and move to have the order set aside or modified in manner hereinafter provided.

(*2*) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

EXPLANATION.—A "public place" includes also property belonging to the State, camping-grounds and grounds left unoccupied for sanitary and recreative purposes.

Service or notification of order.

134. (*1*) The order shall, if practicable, be served on the person against whom it is made in manner herein provided for service of a summons.

(*2*) If such order cannot be so served, it shall be notified by proclamation, published in such manner as the Local Government may by rule direct, and a copy thereof shall be stuck up at such place or places as may be fittest for conveying the information to such person.

Person to whom order is addressed to obey.

135. The person against whom such order is made shall—

(*a*) perform, within the time specified in the order, the act directed thereby; or

(*b*) appear in accordance with such order, and either show cause against the same, or apply to

or show cause or claim jury.

The Code of Criminal Procedure, 1898.

(Part IV.—Prevention of Offences.—Chapter X.—Public Nuisances.—Sections 136-143.)

the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper.

Consequence of his failing to do so.

136. If such person does not perform such act or appear and show cause or apply for the appointment of a jury as required by section 135, he shall be liable to the penalty prescribed in that behalf in section 188 of the Indian Penal Code, and the order shall be made absolute.

XLV of 1860

Procedure where he appears to show cause.

137. (*1*) If he appears and shows cause against the order, the Magistrate shall take evidence in the matter *as in a summons-case.*

(*2*) If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.

(*3*) If the Magistrate is not so satisfied, the order shall be made absolute.

Procedure where he claims jury.

138. (*1*) On receiving an application under section 135 to appoint a jury, the Magistrate shall—

(*a*) forthwith appoint a jury consisting of an uneven number of persons not less than five, of whom the foreman and one-half of the remaining members shall be nominated by such Magistrate, and the other members by the applicant;

(*b*) summon such foreman and members to attend at such place and time as the Magistrate thinks fit; and

(*c*) fix a time within which they are to return their verdict.

(*2*) *The time so fixed may, for good cause shown, be extended by the Magistrate.*

Procedure where jury finds Magistrate's order to be reasonable.

139. (*1*) If the jury or a majority of the jurors find that the order of the Magistrate is reasonable and proper as originally made, or subject to a modification which the Magistrate accepts, the Magistrate shall make the order absolute, subject to such modification (if any).

(*2*) In other cases, no further proceedings shall be taken *under this Code; unless the Magistrate is of opinion that there has been misconduct on the part of the jury, in which case he may appoint a fresh jury and the proceedings shall then commence de novo.*

Procedure on order being made absolute.

140. (*1*) When an order has been made absolute under section 136, section 137 or section 139, the Magistrate shall give notice of the same to the person against whom the order was made, and shall further require him to perform the act directed by the order within a time to be fixed in the notice, and inform him that, in case of disobedience, he will be liable to the penalty provided by section 188 of the Indian Penal Code.

XLV of 1860.

Consequences of disobedience to order.

(*2*) If such act is not performed within the time fixed, the Magistrate may cause it to be performed, and may recover the costs of performing it, either by the sale of any building, goods or other property removed by his order, or by the distress and sale of any other moveable property of such person within or without the local limits of such Magistrate's jurisdiction. If such other property is without such limits, the order shall authorise its attachment and sale when endorsed by the Magistrate within the local limits of whose jurisdiction the property to be attached is found.

(*3*) No suit shall lie in respect of anything done in good faith under this section.

Procedure on failure to appoint jury or omission to return verdict.

141. If the applicant by neglect or otherwise prevents the appointment of the jury, or if from any cause the jury appointed do not return their verdict within the time fixed or within such further time as the Magistrate may in his discretion allow, the Magistrate may pass such order as he thinks fit, and such order shall be executed in the manner provided by section 140.

Injunction pending inquiry.

142. (*1*) If a Magistrate making an order under section 133 considers that immediate measures should be taken to prevent imminent danger or injury of a serious kind to the public, he may, whether a jury is to be, or has been, appointed or not, issue such an injunction to the person against whom the order was made as is required to obviate or prevent such danger or injury *pending the finding of the jury or other determination of the matter.*

(*2*) In default of such person forthwith obeying such injunction, the Magistrate may himself use, or cause to be used, such means as he thinks fit to obviate such danger or to prevent such injury.

(*3*) No suit shall lie in respect of anything done in good faith by a Magistrate under this section.

Magistrate may prohibit repetition or continuance of public nuisance.

143. A District Magistrate or Subdivisional Magistrate, or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code or any special or local law.

XLV of 1860.

The Code of Criminal Procedure, 1898.

(Part IV.—Prevention of Offences.—Chapter XI.—Temporary Orders in Urgent Cases of Nuisance or apprehended Danger.—Section 144. Chapter XII.—Disputes as to Immoveable Property.—Section 145-146.)

CHAPTER XI.

TEMPORARY ORDERS IN URGENT CASES OF NUISANCE *OR APPREHENDED DANGER.*

Power to issue order absolute at once in urgent cases of nuisance *or apprehended danger.*

144. (*1*) In cases where, in the opinion of a District Magistrate, *a Chief Presidency Magistrate* a Subdivisional Magistrate, or of any other Magistrate specially empowered by the Local Government or *the Chief Presidency Magistrate* or the District Magistrate to act under this section, immediate prevention or speedy remedy is desirable,

such Magistrate may, by a written order stating the material facts of the case and served in manner provided by section 134, direct any person to abstain from a certain act or to take certain order with certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent, or tends to prevent, obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, or danger to human life, health or safety, or a riot or an affray.

(*2*) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed *ex parte*.

(*3*) An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

(*4*) Any Magistrate may rescind or alter any order made under this section by himself or any Magistrate subordinate to him or by his predecessor in office.

(*5*) No order under this section shallt remain in force for more than two months from the making thereof ; unless, in cases of danger to human life, health or safety, or a likelihood of a riot or an affray, the Local Government, by notification in the official Gazette, otherwise directs.

CHAPTER XII.

DISPUTES AS TO IMMOVEABLE PROPERTY.

Procedure where dispute concerning land, etc., is likely to cause breach of peace.

145. (*1*) Whenever a District Magistrate, Subdivisional Magistrate or Magistrate of the first class is satisfied from a police report or other information that a dispute likely to cause a breach of the peace exists concerning any *land or water* or the boundaries thereof, within the local limits of his jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, within a time to be fixed by such Magistrate, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(*2*) *For the purposes of this section the expression "land or water" includes houses, fisheries, crops or other produce of land, and the rents or profits of any such property.*

(*3*) *A copy of the order shall be served in manner provided by this Code for the service of a summons.*

Inquiry as to possession.

(*4*) The Magistrate shall then, without reference to the merits of the claims of any of such parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive the evidence produced by them respectively, consider the effect of such evidence, take such further evidence (if any) as he thinks necessary, and, if possible, decide whether any and which of the parties *was at the date of the order before mentioned* in such possession of the said subject.

Party in possession to retain possession until legally evicted.

(*5*) If the Magistrate decides that one of the parties *was* then in such possession of the said subject, he shall issue an order declaring such party to be entitled to retain possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction.

(*6*) Nothing in this section shall preclude any party so required to attend from showing that no such dispute as aforesaid exists or has existed ; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, *but, subject to such cancellation, the order of the Magistrate shall be final.*

(*7*) *Proceedings under this section shall not abate by reason only of the death of any of the parties thereto.*

Power to attach subject of dispute.

146. (*1*) If the Magistrate decides that none of the parties is then in such possession, or is unable to satisfy himself as to which of them is then in such possession of the subject of dispute, he may attach it until a competent Court has determined the rights of the parties thereto, or the person entitled to possession thereof.

(*2*) *When the Magistrate attaches the subject of dispute, he may, if he thinks fit, appoint a receiver thereof, who, subject to the control of the Magistrate, shall have all the powers of a receiver appointed under the Code of Civil Procedure.* XIV of 1882.

The Code of Criminal Procedure, 1898.

(Part IV.—Prevention of Offences.—Chapter XII.—Disputes as to Immoveable Property.—Sections 147-148. Chapter XIII.—Preventive Action of the Police.—Sections 149-153. Part V.—Information to the Police and their Powers to Investigate.—Chapter XIV.—Sections 154-155)

Disputes concerning easements, etc.

147. Whenever any such Magistrate is satisfied as aforesaid that a dispute likely to cause a breach of the peace exists concerning *the right of use of any land or water (including any right of way)* within the local limits of his jurisdiction, he may inquire into the matter *in manner provided by section 145;* and may, if it appears to him that such right exists, make an order permitting such thing to be done, or directing that such thing shall not be done, as the case may be, until the person objecting to such thing being done, or claiming that such thing may be done obtains the decision of a competent Court adjudging him to be entitled to prevent the doing of, or to do, such thing, as the case may be:

Provided that no order shall be passed under this section permitting the doing of anything where the right to do such thing is exerciseable at all times of the year, unless such right has been exercised within three months next before the institution of the inquiry; or, where the right is exerciseable only at particular seasons, unless the right has been exercised during the *last of such seasons* before such institution.

Local inquiry.

148. (*1*) Whenever a local inquiry is necessary for the purposes of this chapter, any District Magistrate or Subdivisional Magistrate may depute any Magistrate subordinate to him to make the inquiry, and may furnish him with such written instructions as may seem necessary for his guidance, and may declare by whom the whole or any part of the necessary expenses of the inquiry shall be paid.

(*2*) The report of the person so deputed may be read as evidence in the case.

Order as to costs.

(*3*) When any costs have been incurred by any party to a proceeding under this chapter for witnesses, or pleaders' fees, or both, the Magistrate passing a decision under section 145, section 146 or section 147 may direct by whom such costs shall be paid, whether by such party or by any other party to the proceeding, and whether in whole or in part or proportion. All costs so directed to be paid may be recovered as if they were fines.

CHAPTER XIII.

PREVENTIVE ACTION OF THE POLICE.

Police to prevent cognizable offences.

149. Every police-officer may interpose for the purpose of preventing and shall, to the best of his ability, prevent the commission of any cognizable offence.

Information of design to commit such offences.

150. Every police-officer receiving information of a design to commit any cognizable offence shall communicate such information to the police-officer to whom he is subordinate, and to any other officer whose duty it is to prevent or take cognizance of the commission of any such offence.

Arrest to prevent such offences.

151. A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

Prevention of injury to public property.

152 A police-officer may of his own authority interpose to prevent any injury attempted to be committed in his view to any public property, moveable or immoveable, or the removal or injury of any public landmark, or buoy or other mark used for navigation.

Inspection of weights and measures.

153. (*1*) Any officer in charge of a police-station may, without a warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein, whenever he has reason to believe that there are in such place any weights, measures or instruments for weighing which are false.

(*2*) If he finds in such place any weights, measures or instruments for weighing which are false, he may seize the same, and shall forthwith give information of such seizure to a Magistrate having jurisdiction.

PART V.

INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE.

CHAPTER XIV.

Information in cognizable cases.

154. Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf.

Information in non-cognizable cases.

155. (*1*) When information is given to an officer in charge of a police-station of the commission within the limits of such station of a non-cognizable offence,

The Code of Criminal Procedure, 1898.

(Part V.—Information to the Police and their Powers to Investigate.—Chapter XIV.—Sections 156-162.)

he shall enter in a book to be kept as aforesaid the substance of such information and refer the informant to the Magistrate.

(2) No police-officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial, or of a Presidency Magistrate.

Investigation into non-cognizable cases.

(3) Any police-officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police-station may exercise in a cognizable case.

156. (1) Any officer in charge of a police-station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.

Investigation into cognizable cases.

(2) No proceeding of a police-officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) *Any Magistrate empowered under section 190 may order such an investigation as above mentioned.*

157. (1) If, from information received or otherwise, an officer in charge of a police-station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report, and shall proceed in person, or shall depute one of his subordinate officers to proceed, to the spot to investigate the facts and circumstances of the case, and to take such measures as may be necessary for the discovery and arrest of the offender:

Procedure where cognizable offence suspected.

Provided as follows:—

(*a*) when any information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police-station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

Where local investigation dispensed with.

(*b*) if it appear to the officer in charge of a police-station that there is no sufficient ground for entering on an investigation, he shall not investigate the case, *but shall record the fact, and inform the complainant (if any) of what he has done.*

Where police-officer in charge sees no sufficient ground for investigation.

(2) In each of the cases mentioned in clauses (*a*) and (*b*) of the proviso to sub-section (1), the officer in charge of the police-station shall state in his said report his reasons for not fully complying with the requirements of that sub section.

158. (1) Every report sent to a Magistrate under section 157 shall, if the Local Government so directs, be submitted through such superior officer of police as the Local Government, by general or special order, appoints in that behalf.

Reports under section 157 how submitted.

(2) Such superior officer may give such instructions to the officer in charge of the police-station as he thinks fit, and shall, after recording such instructions on such report, transmit the same without delay to the Magistrate.

159. Such Magistrate, on receiving such report, may, if he thinks fit, at once proceed, or depute any Magistrate subordinate to him to proceed, to *direct an investigation or hold a preliminary and informal inquiry into*, or otherwise to dispose of, the case in manner provided in this Code.

Power to hold investigation or preliminary inquiry.

160. Any police-officer making an investigation under this chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the circumstances of the case; and such person shall attend as so required.

Police-officer's power to require attendance of witnesses.

Provided that, if the attendance of a pardanashin lady is required, the matter shall be referred to the District or Subdivisional Magistrate for orders.

161. (1) Any police-officer making an investigation under this chapter may examine orally any person supposed to be acquainted with the facts and circumstances of the case, and may reduce into writing any statement made by the person so examined.

Examination of witnesses by police.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

162. (1) No statement, other than a dying declaration, made by any person to a police-officer in the course of an investigation under this chapter shall, if reduced to writing, be signed by the person making it, or shall be used as evidence *except in manner and to the extent provided by section 172, or a proceeding against the person making the statement.*

Statements to police not to be signed or admitted in evidence.

The Code of Criminal Procedure, 1898.

(Part V.—Information to the Police and their Powers to Investigate.—Chapter XIV. —Sections 163-167.)

(2) Nothing in this section shall be deemed to affect the provisions of section 27 of the Indian
1 of 1872. Evidence Act, 1872.

No inducement to be offered.

163. (1) No police-officer or person in authority shall offer or make, or cause to be offered or made, any such inducement, threat or promise as is mentioned in the Indian
1 of 1872. Evidence Act, 1872, section 24.

(2) But no police-officer or other person shall prevent, by any caution or otherwise, any person from making in the course of any investigation under this chapter any statement which he may be disposed to make of his own free will.

Power to record statements and confessions.

164. (1) Every Magistrate not being a police-officer may record any statement or confession made to him in the course of an investigation under this chapter or at any time afterwards before the commencement of the inquiry or trial.

(2) Such statements shall be recorded in such of the manners hereinafter prescribed for recording evidence as is, in his opinion, best fitted for the circumstances of the case. Such confessions shall be recorded and signed in the manner provided in section 364, and shall then be forwarded to the Magistrate by whom the case is to be inquired into or tried.

(3) No Magistrate shall record any such confession unless, upon questioning the person making it, he has reason to believe that it was made voluntarily; and when he records any confession, he shall make a memorandum at the foot of such record to the following effect:—

"I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

"(*Signed*) A. B.,
Magistrate"

Explanation.—It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case.

Search by police-officer.

165. (1) Whenever an officer in charge of a police-station, or a police-officer making an investigation, considers that the production of any document or other thing is necessary to the conduct of an investigation into any offence which he is authorised to investigate, and there is reason to believe that a person to whom a summons or order under section 94 has been or might be issued will not or would not produce such document or other thing *according to the directions of* the summons or order, or when such document or other thing is not known to be in the possession of any person, such officer may search, or cause search to be made, for the same, in any place within the limits of the station of which he is in charge, or to which he is attached.

(2) Such officer shall, if practicable, conduct the search in person.

(3) If he is unable to conduct the search in person, and there is no other person competent to make the search present at the time, he may require any officer subordinate to him to make the search, and he shall deliver to such subordinate officer an order in writing, specifying the document or other thing for which search is to be made, and the place to be searched; and such subordinate officer may thereupon search for such thing in such place.

(4) The provisions of this Code as to search-warrants shall, so far as may be, apply to a search made under this section.

When officer in charge of police-station may require another to issue search-warrant.

166. (1) An officer in charge of a police-station may require an officer in charge of another police-station, whether in the same or a different district, to cause a search to be made in any place, in any case in which the former officer might cause such search to be made within the limits of his own station.

(2) Such officer, on being so required, shall proceed according to the provisions of section 165, and shall forward the thing found, if any, to the officer at whose request the search was made.

Procedure when investigation cannot be completed in twenty-four hours.

167. (1) Whenever it appears that any investigation under this chapter cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation *or information* is well-founded, the officer in charge of the police-station shall forthwith transmit to the nearest Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused (*if any*) to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days. If he has not jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction.

The Code of Criminal Procedure, 1898.

(Part V.—Information to the Police and their Powers to Investigate.—Chapter XIV.—Sections 168-172.)

(3) A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.

(4) If such order be given by a Magistrate other than the District Magistrate or Subdivisional Magistrate, he shall forward a copy of his order, with his reasons for making it, to the Magistrate to whom he is immediately subordinate.

Report of investigation by subordinate police-officer.

168. When any subordinate police-officer has made any investigation under this chapter, he shall report the result of such investigation to the officer in charge of the police-station.

Release of accused when evidence deficient.

169. (1) If, upon an investigation under this chapter, it appears to the officer in charge of the police-station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report and to try the accused or commit him for trial.

(2) *The Magistrate may, if he thinks fit, discharge the bond, or make such other order in the matter as he may think just.*

Case to be sent to Magistrate when evidence is sufficient.

170. (1) If, upon an investigation under this chapter, it appears to the officer in charge of the police-station that there is sufficient evidence or reasonable ground as aforesaid, such officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial; or, if the offence is bailable and the accused is able to give security, shall take security from him for his appearance before such Magistrate on a day fixed and for his attendance from day to day before such Magistrate until otherwise directed.

(2) When the officer in charge of a police-station forwards an accused person to a Magistrate or takes security for his appearance before such Magistrate under this section, he shall send to such Magistrate any weapon or other article which it may be necessary to produce before him, and shall require the complainant (if any) and so many of the persons who appear to such officer to be acquainted with the circumstances of the case as he may think necessary, to execute a bond to appear before the Magistrate *in time and manner thereby directed* and prosecute or give evidence (as the case may be) in the matter of the charge against the accused.

(3) If the Court of the District Magistrate or Subdivisional Magistrate be mentioned in the bond, such Court shall be held to include any Court to which such Magistrate may refer the case for inquiry or trial, provided reasonable notice of such reference be given to such complainant or persons.

(4) The day fixed under this section shall be the day whereon the accused person is to appear if security for his appearance has been taken, or the day on which he may be expected to arrive at the Court of the Magistrate, if he is to be forwarded in custody.

(5) The officer in whose presence the bond is executed shall deliver a copy thereof to one of the persons who executed it, and shall then send to the Magistrate the original with its report.

Complainants and witnesses not to be required to accompany police-officer.

171. No complainant or witness on his way to the Court of the Magistrate shall be required to accompany a police-officer,

Complainants and witnesses not to be subjected to restraint.

or shall be subjected to unnecessary restraint or inconvenience, or required to give any security for his appearance other than his own bond:

Recusant complainant or witness may be forwarded in custody.

Provided that, if any complainant or witness refuses to attend or to execute a bond as directed in section 170, the officer in charge of the police-station may forward him under custody to the Magistrate, who may detain him in custody until he executes such bond, or until the hearing of the case is completed.

Diary of proceedings in investigation.

172. (1) Every police-officer making an investigation under this chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him, the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(2) Any Criminal Court may send for the police-diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court; but if they are used by the police-officer who made them to refresh his memory, or if the Court uses them for the purpose of contradicting such police-officer, the

The Code of Criminal Procedure, 1898.

(Part V.—Information to the Police and their Powers to Investigate.—Chapter XIV.—Sections 173-176.)

provisions of the Indian Evidence Act, 1872, section 161 or section 145, as the case may be, shall apply. 1 of 1872.

Report of police-officer.

173. (*1*) Every investigation under this chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall forward to a Magistrate empowered to take cognizance of the offence on a police report a report in the form prescribed by the Local Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused person has been forwarded in custody or has been released on his bond, and, if so, whether with or without sureties.

(*2*) Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which the Local Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation.

(*3*) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

Police to inquire and report on suicide, etc.

174. (*1*) Every officer in charge of a police-station, *and every other police-officer appointed by the Local Government in that behalf*, on receiving information that a person—

(*a*) has committed suicide, or

(*b*) has been killed by another, or by an animal, or by machinery, or by an accident, or

(*c*) has died under circumstances raising a reasonable suspicion that some other person has committed an offence,

shall immediately give intimation thereof to the nearest Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the Local Government, or by any general or special order of the District or Subdivisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(*2*) The report shall be signed by such police-officer and other persons, or by so many of them as concur therein, and shall be forthwith forwarded to the District Magistrate or the Subdivisional Magistrate.

(*3*) When there is any doubt regarding the cause of death, or when for any other reason the police-officer considers it expedient so to do, he shall, subject to such rules as the Local Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other *qualified medical man* appointed in this behalf by the Local Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(*4*) In the Presidencies of Fort St. George and Bombay, investigations under this section may be made by the head of the village, who shall then report the result to the nearest Magistrate authorised to hold inquests.

(*5*) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Subdivisional Magistrate, and any Magistrate specially empowered in this behalf by the Local Government or the District Magistrate.

(*6*) *The provisions of this section do not apply to the death of any prisoner in jail. In such case a copy of the record required by section 15 of the Prisons Act, 1894, shall be forthwith forwarded by the Superintendent of the Jail to the District Magistrate, who on receipt of such report shall take such action thereon as he may think fit.* IX of 1894.

Power to summon persons.

175. (*1*) An officer in charge of a police-station may, by order in writing, summon two or more persons as aforesaid for the purpose of the said investigation, and any other person who appears to be acquainted with the facts of the case. Every person so summoned shall be bound to attend and to answer truly all questions other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture.

(*2*) If the facts do not disclose a cognizable offence to which section 170 applies, such persons shall not be required by the police-officer to attend a Magistrate's Court.

Inquiry by Magistrate into cause of death.

176. (*1*) When any person dies while in the custody of the police, the nearest Magistrate empowered to hold inquests shall, and, in any other case mentioned in section 174, clauses (*a*), (*b*) and (*c*) of sub-

section (*t*), any Magistrate so empowered may hold an inquiry into the cause of death, either instead of, or in addition to, the investigation held by the police-officer; and, if he does so, he shall have all the powers in conducting it which he would have in holding an inquiry into an offence. The Magistrate holding such an inquiry shall record the evidence taken by him in connection therewith in any of the manners hereinafter prescribed according to the circumstances of the case.

Power to disinter corpses.

(2) Whenever such Magistrate considers it expedient to make an examination of the dead body of any person who has been already interred, in order to discover the cause of his death, the Magistrate may cause the body to be disinterred and examined.

PART VI.

PROCEEDINGS IN PROSECUTIONS.

CHAPTER XV.

OF THE JURISDICTION OF THE CRIMINAL COURTS IN INQUIRIES AND TRIALS.

A.—Place of Inquiry or Trial.

Ordinary place of inquiry and trial.

177. Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

Power to order cases to be tried in different sessions divisions.

178. Notwithstanding anything contained in section 177, the Local Government may direct that any cases or class of cases committed for trial in any district may be tried in any sessions division:

Provided that such direction be not repugnant to any direction previously issued *by the High Court under section 15 of the Indian High Courts Act, 1861* or under this Code, section 526.

24 & 25 Vict., c. 104.

Accused triable in district where act is done or where consequence ensues.

179. When a person is accused of the commission of any offence by reason of anything which has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued.

Illustrations.

(*a*) A is wounded within the local limits of the jurisdiction of Court X, and dies within the local limits of the jurisdiction of Court Z. The offence of the culpable homicide of A may be inquired into or tried either by X or Z.

(*b*) A is wounded within the local limits of the jurisdiction of Court X, and is, during ten days within the local limits of the jurisdiction of Court Y, and during ten days more within the local limits of the jurisdiction of Court Z, unable in the local limits of the jurisdiction of either Court Y or Court Z to follow his ordinary pursuits. The offence of causing grievous hurt to A may be inquired into or tried by X, Y or Z.

(*c*) A is put in fear of injury within the local limits of the jurisdiction of Court X, and is thereby induced, within the local limits of the jurisdiction of Court Y, to deliver property to the person who put him in fear. The offence of extortion committed on A may be inquired into or tried either by X or Y.

(*d*) *A is wounded in the Native State of Baroda, and dies of his wounds in Poona. The offence of causing A's death may be inquired into and tried in Poona.*

Place of trial where act is offence by reason of relation to other offence.

180. When an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done.

Illustrations.

(*a*) A charge of abetment may be inquired into or tried either by the Court within the local limits of whose jurisdiction the abetment was committed, or by the Court within the local limits of whose jurisdiction the offence abetted was committed.

(*b*) A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

(*c*) A charge of wrongfully concealing a person known to have been kidnapped may be inquired into or tried by the Court within the local limits of whose jurisdiction the wrongful concealing, or by the Court within the local limits of whose jurisdiction the kidnapping, took place.

Being a thug or belonging to a gang of dacoits, escape from custody, etc.

181. (*1*) The offence of being a thug, of being a thug and committing murder, of dacoity, of dacoity with murder, of having belonged to a gang of dacoits, or of having escaped from custody, may be inquired into or tried by a Court within the local limits of whose jurisdiction the person charged is.

Criminal misappropriation and criminal breach of trust.

(2) The offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received by the accused person, or the offence was committed.

The Code of Criminal Procedure, 1898.

Part VI.—Proceedings in Prosecutions.—Chapter XV.—Of the Jurisdiction of the Criminal Courts in Inquiries and Trials.—Sections 182-188.)

(3) The offence of stealing anything may be inquired into or tried by a Court within the local limits of whose jurisdiction such thing was stolen or was possessed by the thief or by any person who receives or retains the same knowing or having reason to believe it to be stolen.

Stealing.

182. When it is uncertain in which of several local areas an offence was committed, or

where an offence is committed partly in one local area and partly in another, or

Place of inquiry or trial where scene of offence is uncertain or not in one district only; or where offence is continuing, or consists of several acts.

where an offence is a continuing one, and continues to be committed in more local areas than one, or

where it consists of several acts done in different local areas,

it may be inquired into or tried by a Court having jurisdiction over any of such local areas.

183. An offence committed whilst the offender is in the course of performing a journey or voyage may be inquired into or tried by a Court through or into the local limits of whose jurisdiction the offender, or the person against whom, or the thing in respect of which, the offence was committed, passed in the course of that journey or voyage.

Offence committed on a journey.

184. All offences against the provisions of any law for the time being in force relating to Railways, Telegraphs, the Post-office or Arms and Ammunition may be inquired into or tried in a presidency-town, whether the offence is stated to have been committed within such town or not:

Offences against Railway, Telegraph, Post-office and Arms Acts.

Provided that the offender and all the witnesses necessary for his prosecution are to be found within such town.

185. (1) Whenever any doubt arises as to the Court by which any offence should under the preceding provisions of this chapter be inquired into or tried, the High Court, within the local limits of whose appellate criminal jurisdiction the offender actually is, may decide by which Court the offence shall be inquired into or tried.

High Court to decide, in case of doubt, district where inquiry or trial shall take place.

(2) In *Lower* Burma, when the offender is an European British subject, the Recorder of Rangoon, and in all other cases the Judicial Commissioner, shall, for the purposes of this section, be deemed to be the High Court.

186. (1) When a Presidency Magistrate, a District Magistrate, a Sub-divisional Magistrate, or, if he is specially empowered in this behalf by the Local Government, a Magistrate of the first class, sees reason to believe that any person within the local limits of his jurisdiction has committed without such limits (whether within or without British India) an offence which cannot, under the provisions of sections 177 to 184 (both inclusive), or any other law for the time being in force, be inquired into or tried within such local limits, but is under some law for the time being in force triable in British India, such Magistrate may inquire into the offence as if it had been committed within such local limits, and compel such person in manner hereinbefore provided to appear before him, and send such person to the Magistrate having jurisdiction to inquire into or try such offence, or, if such offence is bailable, take a bond with or without sureties for his appearance before such Magistrate.

Power to issue summons or warrant for offence committed beyond local jurisdiction.

Magistrate's procedure on arrest.

(2) When there are more Magistrates than one having such jurisdiction and the Magistrate acting under this section cannot satisfy himself as to the Magistrate to or before whom such person should be sent, or bound to appear, the case shall be reported for the orders of the High Court.

187. (1) If the person has been arrested under a warrant issued under section 186 by a Magistrate other than a Presidency Magistrate or District Magistrate, such Magistrate shall send the person arrested to the District Magistrate to whom he is subordinate, unless the Magistrate having jurisdiction to inquire into or try such offence issues his warrant for the arrest of such person, in which case the person arrested shall be delivered to the police-officer executing such warrant, or shall be sent to the Magistrate by whom such warrant was issued.

Procedure where warrant issued by subordinate Magistrate.

(2) If the offence which the person arrested is alleged or suspected to have committed is one which may be inquired into or tried by any Criminal Court in the same district other than that of the Magistrate acting under section 186, such Magistrate shall send such person to such Court.

188. When a Native Indian subject of Her Majesty commits an offence at any place beyond the limits of British India *or*

(a) when *any* British subject commits an offence in the *territories* of a Prince or *Chief* in India, or

Liability of British subjects for offences committed out of British India.

(b) when a servant of the Queen (whether a British subject or not) commits an offence in the territories of any Prince or Chief in India,

he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found:

Political Agent to certify fitness of inquiry into charge.

Provided that no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there be one, for the territory in which the offence is alleged to have been committed certifies that, in his opinion, the charge ought to be inquired into in British India: *and when there is no Political Agent, the sanction of the Local Government shall be required:*

Provided also that any proceedings taken against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence had been committed in British India shall be a bar to further proceedings against him under the Foreign Jurisdiction and Extra-
XXI of 1879. dition Act, 1879, in respect of the same offence in any territory beyond the limits of British India.

Power to direct copies of depositions and exhibits to be received in evidence.

189. Whenever any such offence as is referred to in section 188 is being inquired into or tried, the Local Government may, if it thinks fit, direct that copies of depositions made or exhibits produced before the Political Agent or a judicial officer in or for the territory in which such offence is alleged to have been committed shall be received as evidence by the Court holding such inquiry or trial in any case in which such Court might issue a Commission for taking evidence as to the matters to which such depositions or exhibits relate.

B.—Conditions requisite for Initiation of Proceedings.

[Act X of 1882, s. 191.] Cognizance of offences by Magistrates.

190. (*1*) Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence—

(*a*) upon receiving a complaint of facts which constitute such offence;

(*b*) upon a police report of such facts;

(*c*) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

(*2*) The Local Government, or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance under *sub-section* (*1*), clause (*a*) or clause (*b*) of offences for which he may try or commit for trial.

(*3*) The Local Government may empower any Magistrate of the first or second class to take cognizance under *sub-section* (*1*), clause (*c*) of offences for which he may try or commit for trial.

[Act X of 1882, s. 191, last para.]

Transfer or commitment on application of accused.

191. When a Magistrate takes cognizance of an offence under sub-section (*1*), clause (*c*) of the preceding section, the accused, or, when there are several persons accused, any one of them, shall, *before any evidence has been taken*, be entitled to require that the case shall, instead of being tried by such Magistrate, be either transferred to another Magistrate or committed to the Court of Session.

Transfer of cases by Magistrates.

192. (*1*) Any District Magistrate, *Chief Presidency Magistrate* or Sub-divisional Magistrate may transfer any case, of which he has taken cognizance, for inquiry or trial to any Magistrate subordinate to him.

(*2*) Any District Magistrate may empower any Magistrate of the first class who has taken cognizance of any case to transfer it for inquiry or trial to any other specified Magistrate in his district who is competent under this Code to try the accused or commit him for trial; and such Magistrate may dispose of the case accordingly.

Cognizance of offences by Courts of Session.

193. (*1*) Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction, unless the accused has been committed to it by a Magistrate duly empowered in that behalf.

(*2*) Additional Sessions Judges and *Assistant* Sessions Judges shall try such cases only as the Local Government by general or special order *may direct* them to try, or as the Sessions Judge of the division *by general or special order may* make over to them for trial.

(*3*) *A Sessions Judge of one sessions division may be appointed by the Local Government to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in either division as the Local Government may direct.*

Cognizance of offences by High Court.

194. (*1*) The High Court may take cognizance of any offence upon a commitment made to it in manner hereinafter provided.

Nothing herein contained shall be deemed to affect the provisions of any letters patent granted under the *Indian High Courts Act, 1861, or any other provision of this Code.*

24 & 25 Vict., c. 104.

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions—Chapter XV.—Of the Jurisdiction of the Criminal Courts in Inquiries and Trials.—Sections 195-197.)

(2) (*a*) *The Advocate General may, with the previous sanction of the Governor General in Council or the Local Government, exhibit to the High Court, against persons subject to the jurisdiction of the High Court, informations for all purposes for which Her Majesty's Attorney-General may exhibit informations on behalf of the Crown in the High Court of Justice in England.*

Informations by Advocate General.

Act X of 1875, s. 144.] (*b*) *Such proceedings may be taken upon every such information as may lawfully be taken in case of similar informations filed by Her Majesty's Attorney General so far as the circumstances of the case and the practice and procedure of the said High Court will admit.*

(*c*) *All fines, penalties, forfeitures, debts and sums of money recovered or levied under or by virtue of any such information shall belong to the Government of India.*

(*d*) *The High Court may make rules for carrying into effect the provisions of this section.*

195. (1) No Court shall take cognizance—

(*a*) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, except with the previous sanction, or on the complaint, of the public servant concerned or of some public servant to whom he is subordinate;

Prosecution for contempts of lawful authority of public servants.

XLV of 1860.

(*b*) of any offence punishable under section 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 or 228 of the same Code, when such offence is committed in, or in relation to, any proceeding in any Court, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate;

Prosecution for certain offences against public justice.

(*c*) of any offence described in section 463 or punishable under section 471, 475 or 476 of the same Code, when such offence has been committed by a party to any proceeding in any Court in respect of a document *produced or* given in evidence in such proceeding, except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

Prosecution for certain offences relating to documents given in evidence.

(2) *In this section the term "Court" means a Civil, Revenue or Criminal Court, but does not include a Registrar under the Registration Act, 1877, or other ministerial officer;*

III of 1877.

(3) *The provisions of this section, with reference to the offences named therein, apply also to the abetment of such offences, and attempts to commit them.*

(4) The sanction referred to in this section may be expressed in general terms, and need not name the accused person; but it shall, so far as practicable, specify the Court or other place in which, and the occasion on which, the offence was committed.

Nature of sanction necessary.

(5) When sanction is given in respect of any offence referred to in this section, the Court taking cognizance of the case may frame a charge of any other offence so referred to which is disclosed by the facts.

(6) Any sanction refused under this section may be granted by any authority to which the authority refusing it is subordinate; and no such sanction shall remain in force for more than six months from the date on which it was *drawn up and issued*: *Provided that the High Court may, for good cause shewn, extend the time.*

(7) For the purposes of this section every Court, other than a Court of Small Causes, shall be deemed to be subordinate only to the Court to which appeals from the former Court ordinarily lie.

(8) The Courts of Small Causes in the Presidency-towns shall be deemed to be subordinate to the High Court, and every other Court of Small Causes shall be deemed to be subordinate to the Court of Session for the sessions division within which such Court is situate.

196. No Court shall take cognizance of any offence punishable under Chapter VI of the Indian Penal Code, except section 127, or punishable under section 294A of the same Code, unless upon complaint made by order of, or under authority from, the Governor General in Council, the Local Government, or some officer empowered by the Governor General in Council in this behalf.

Prosecution for offences against the State.

XLV of 1860.

197. (1) When any Judge, or any public servant not removable from his office without the sanction of the Government of India or the Local Government, is accused as such Judge or public servant of any offence, no Court shall take cognizance of such offence, except with the previous sanction of the Government having power to order his removal, or of some officer empowered in this behalf by such Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power to give such sanction has not been limited by such Government.

Prosecution of Judges and public servants.

(2) Such Government may determine the person by whom, and the manner in which, the prosecution of such Judge or

Power of Government as to prosecution.

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XV.—Of the Jurisdiction of the Criminal Courts in Inquiries and Trials.—Sections 198-199.—Chapter XVI.—Of Complaints to Magistrates.—Sections 200-203.—Chapter XVII.—Of the Commencement of Proceedings before Magistrates.—Section 204.)

public servant is to be conducted, and may specify the Court before which the trial is to be held.

198. No Court shall take cognizance of an offence falling under Chapter XIX or Chapter XXI of the Indian Penal Code or under sections 493 to 496 (both inclusive) of the same Code, except upon a complaint made by some person aggrieved by such offence.

Prosecution for breach of contract, defamation and offences against marriage.

XLV of 1860.

199. No Court shall take cognizance of an offence under section 497 or section 498 of the Indian Penal Code, except upon a complaint made by the husband of the woman, or, in his absence, by some person who had care of such woman on his behalf at the time when such offence was committed.

Prosecution for adultery or enticing a married woman.

XLV of 1860.

CHAPTER XVI.

OF COMPLAINTS TO MAGISTRATES.

200. A Magistrate taking cognizance of an offence on complaint shall at once examine the complainant upon oath, and the substance of the examination shall be reduced to writing and shall be signed by the complainant, and also by the Magistrate:

Examination of complainant.

Provided as follows:—

(*a*) when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant before transferring the case under section 192;

(*b*) where the Magistrate is a Presidency Magistrate, such examination may be on oath or not as the Magistrate in each case thinks fit, and need not be reduced to writing; but the Magistrate may, if he thinks fit, before the matter of the complaint is brought before him, require it to be reduced to writing:

(*c*) when the case has been transferred under section 192 and the Magistrate so transferring it has already examined the complainant, the Magistrate to whom it is so transferred shall not be bound to re-examine the complainant.

201. (*1*) If the complaint has been made in writing *to a* Magistrate *who* is not competent to take cognizance of the case, he shall return the complaint for presentation to the proper *Court* with an endorsement to that effect.

Procedure by Magistrate not competent to take cognizance of the case.

(*2*) *If the complaint has not been made in writing, such Magistrate shall direct the complainant to the proper tribunal and record the fact that the complaint was made.*

202. (*1*) If the Chief Presidency Magistrate, or any other Presidency Magistrate whom the Local Government may from time to time authorise in this behalf, or any Magistrate of the first or second class, sees reason to distrust the truth of a complaint of an offence of which he is authorised to take cognizance, he may, when the complainant has been examined, record his reasons for distrusting the truth of the complaint, and may then postpone the issue of process for compelling the attendance of the person complained against, and either inquire into the case himself or direct a previous local investigation to be made by any officer subordinate to such Magistrate, or by a police-officer, or by such other person, not being a Magistrate or police-officer, as he thinks fit, for the purpose of ascertaining the truth or falsehood of the complaint.

Postponement of issue of process.

(*2*) If such investigation is made by some person not being a Magistrate or a police-officer, he shall exercise all the powers conferred by this Code on an officer in charge of a police-station, except that he shall not have power to arrest without warrant.

(*3*) This section applies to the police in the towns of Calcutta and Bombay.

203. The Magistrate before whom a complaint is made or to whom it has been transferred may dismiss the complaint if, after examining the complainant and considering the result of the investigation (if any) made under section 202, there is in his judgment no sufficient ground for proceeding. *In such case he shall briefly record his reasons for so doing.*

Dismissal of complaint.

CHAPTER XVII.

OF THE COMMENCEMENT OF PROCEEDINGS BEFORE MAGISTRATES.

204. (*1*) If, in the opinion of a Magistrate taking cognizance of an offence, there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule, a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or some other Magistrate having jurisdiction.

Issue of process.

(*2*) Nothing in this section shall be deemed to affect the provisions of section 90.

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XVII.—Of the Commencement of Proceedings before Magistrates.—Section 205.—Chapter XVIII.—Of Inquiry into Cases triable by the Court of Session or High Court.—Sections 206-212.)

(3) When by any law for the time being in force any process-fees or other fees are payable, no summons shall be issued until the fees are paid, and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the case.

Magistrate may dispense with personal attendance of accused.

205. (*1*) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused, and permit him to appear by his pleader.

(*2*) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in manner hereinbefore provided.

CHAPTER XVIII.

OF INQUIRY INTO CASES TRIABLE BY THE COURT OF SESSION OR HIGH COURT.

Power to commit for trial.

206. (*1*) *Subject to the provisions of section 443*, any Presidency Magistrate, District Magistrate, Subdivisional Magistrate or Magistrate of the first class, or any Magistrate empowered in this behalf by the Local Government, may commit any person for trial to the Court of Session or High Court for any offence triable by such Court.

(*2*) But, save as herein otherwise provided, no person triable by the Court of Session shall be committed for trial to the High Court.

Procedure in inquiries preparatory to commitment.

207. The following procedure shall be adopted in inquiries before Magistrates where the case is triable exclusively by a Court of Session or High Court, or, in the opinion of the Magistrate, ought to be tried by such Court.

Taking of evidence produced.

208. (*1*) The Magistrate shall, when the accused appears or is brought before him, proceed to hear the complainant (if any), and take in manner hereinafter provided all such evidence as may be produced in support of the prosecution or in behalf of the accused, or as may be called for by the Magistrate.

(*2*) *The accused shall be at liberty to cross-examine the witnesses for the prosecution, and in such case the prosecutor may re-examine them.*

Process for production of further evidence.

(*3*) If the complainant or officer conducting the prosecution, or the accused, applies to the Magistrate to issue process to compel the attendance of any witness or the production of any document or other thing, the Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

(*4*) Nothing in this section shall be deemed to require a Presidency Magistrate to record his reasons.

When accused person to be discharged.

209. (*1*) When the evidence referred to in section 208, sub-sections (*1*) and (*3*) has been taken, and he has examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him, such Magistrate shall, if he finds that there are not sufficient grounds for committing the accused person for trial, *record his reasons and* discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

(*2*) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, or reasons to be recorded by such Magistrate, he considers the charge to be groundless.

When charge is to be framed.

210. (*1*) When, upon such evidence being taken and such examination (if any) being made, the Magistrate finds that *a primâ facie case has been made out and that* there are sufficient grounds for committing the accused for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged.

Charge to be explained, and copy furnished, to accused.

(*2*) As soon as the charge has been framed, it shall be read and explained to the accused, and a copy thereof shall, if he so requires, be given to him free of cost.

List of witnesses for defence on trial.

211. (*1*) The accused shall be required at once to give in, orally or in writing, a list of the persons (if any) whom he wishes to be summoned to give evidence on his trial.

Further list.

(*2*) The Magistrate may, in his discretion, allow the accused to give in any further list of witnesses at a subsequent time; and, where the accused is committed for trial before the High Court, nothing in this section shall be deemed to preclude the accused from giving, at any time before his trial, to the Clerk of the Crown a further list of the persons whom he wishes to be summoned to give evidence on such trial.

Power of Magistrate to examine such witnesses.

212. The Magistrate may, in his discretion, summon and examine any witness named in any list given in to him under section 211.

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XVIII.—Of Inquiry into Cases triable by the Court of Session or High Court.—Sections 213-219.)

213. (*1*) When the accused, on being required to give in a list under section 211, has declined to do so, or when he has given in such list and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under section 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be), and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment.

Order of commitment.

(*2*) *If the Magistrate, after hearing the witnesses for the defence, is satisfied that there is no sufficient cause to justify the commitment of the accused, he may cancel the charge and discharge the accused.*

214. If any person (not being an European British subject) is accused before a Magistrate other than a Presidency Magistrate of having committed an offence conjointly with an European British subject who is about to be committed for trial, or to be tried, before the High Court on a similar charge arising out of the same transaction, and the Magistrate finds that there are sufficient grounds for committing the accused for trial, he shall commit him for trial before the High Court, and not before the Court of Session.

Person charged outside presidency-towns jointly with European British subject.

215. A commitment once made under section 213 or section 214 by a competent Magistrate *or by a Court of Session under section 477, or by a Civil or Revenue Court under section 478,* can be quashed by the High Court only, and only on a point of law.

Quashing commitment under section 213 or 214.

216. When the accused has given in any list of witnesses under section 211 and has been committed for trial, the Magistrate shall summon such of the witnesses included in the list, as have not appeared before himself, to appear before the Court to which the accused has been committed:

Summons to witnesses for defence when accused is committed.

Provided that, where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the Crown, and such witnesses may be summoned accordingly:

Provided also that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice, the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witness is material, and, if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness *and all other proper expenses.*

Refusal to summon unnecessary witness unless deposit made.

217. (*1*) Complainants and witnesses for the prosecution and defence, whose attendance before the Court of Session or High Court is necessary and who appear before the Magistrate, shall execute before him bonds binding themselves to be in attendance when called upon at the Court of Session or High Court, to prosecute or to give evidence, as the case may be.

Bond of complainants and witnesses.

(*2*) If any complainant or witness refuses to attend before the Court of Session or High Court, or execute the bond above directed, the Magistrate may detain him in custody until he executes such bond, or until his attendance at the Court of Session or High Court is required, when the Magistrate shall send him in custody to the Court of Session or High Court, as the case may be.

Detention in custody in case of refusal to attend or to execute bond.

218. (*1*) When the accused is committed for trial, the Magistrate shall issue an order to such person as may be appointed by the Local Government in this behalf, notifying the commitment, and stating the offence in the same form as the charge, unless the Magistrate is satisfied that such person is already aware of the commitment and the form of the charge;

Commitment when to be notified.

and shall send the charge, the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session or (where the commitment is made to the High Court) to the Clerk of the Crown or other officer appointed in this behalf by the High Court.

Charge, etc., to be forwarded to High Court or Court of Session.

(*2*) When the commitment is made to the High Court and any part of the record is not in English, an English translation of such part shall be forwarded with the record.

English translation to be forwarded to High Court.

219 (*1*) The Magistrate may, *if he thinks fit,* summon and examine supplementary witnesses after the commitment and before the commencement of the trial, and bind them over in manner hereinbefore provided to appear and give evidence.

Power to summon supplementary witnesses.

(*2*) Such examination shall, if possible, be taken in the presence of the accused, and, where the Magistrate is not a Presidency Magistrate, a copy of the evidence of such witnesses shall, if the accused so require, be given to him free of cost.

The Code of Criminal Procedure, 1898.

(Part VI.—Proceeding in Prosecutions.—Chapter XVIII.—Of Inquiry into Cases triable by the Court of Session or High Court.—Section 220.—Chapter XIX.—Of the Charge.—Section 221-224.)

Custody of accused pending trial.

220. Until and during the trial, the Magistrate shall, subject to the provisions of this Code regarding the taking of bail commit the accused, by warrant, to custody.

CHAPTER XIX.

OF THE CHARGE.

Form of Charges.

Charge to state offence.

221. (*1*) Every charge under this Code shall state the offence with which the accused is charged.

Specific name of offence sufficient description.

(*2*) If the law which creates the offence gives it any specific name, the offence may be described in the charge by that name only.

How stated where offence has no specific name.

(*3*) If the law which creates the offence does not give it any specific name, so much of the definition of the offence must be stated as to give the accused notice of the matter with which he is charged.

(*4*) The law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

What implied in charge.

(*5*) The fact that the charge is made is equivalent to a statement that every legal condition required by law to constitute the offence charged was fulfilled in the particular case.

Language of charge.

(*6*) In the presidency-towns the charge shall be written in English; elsewhere it shall be written either in English or in the language of the Court.

Previous conviction when to be set out.

(*7*) If the accused has been previously convicted of any offence, and it is intended to prove such previous conviction for the purpose of effecting the punishment which the Court is competent to award, the fact, date and place of the previous conviction shall be stated in the charge. If such statement is omitted, the Court may add it at any time before sentence is passed.

Illustrations.

(*a*) A is charged with the murder of B. This is equivalent to a statement that A's act fell within the definition of murder given in sections 299 and 300 of the Indian Penal Code; that it did not fall within any of the general exceptions of the same Code; and that it did not fall within any of the five exceptions to section 300, or that, if it did fall within Exception I, one or other of the three provisoes to that exception applied to it. XLV of 1860.

(*b*) A is charged, under section 326 of the Indian Penal Code, with voluntarily causing grievous hurt to B by means of an instrument for shooting. This is equivalent to a statement that the case was not provided for by section 335 of the Indian Penal Code, and that the general exceptions did not apply to it. XLV of 1860.

(*c*) A is accused of murder, cheating, theft, extortion, adultery or criminal intimidation, or using a false property-mark. The charge may state that A committed murder, or cheating, or theft, or extortion, or adultery, or criminal intimidation, or that he used a false property-mark, without reference to the definitions of those crimes contained in the Indian Penal Code; but the sections under which the offence is punishable must, in each instance, be referred to in the charge. XLV of 1860.

(*d*) A is charged, under section 184 of the Indian Penal Code, with intentionally obstructing a sale of property offered for sale by the lawful authority of a public servant. The charge should be in those words.

Particulars as to time, place and person.

222. The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

When manner of committing offence must be stated.

223. When the nature of the case is such that the particulars mentioned in sections 221 and 222 do not give the accused sufficient notice of the matter with which he is charged, the charge shall also contain such particulars of the manner in which the alleged offence was committed as will be sufficient for that purpose.

Illustrations.

(*a*) A is accused of the theft of a certain article at a certain time and place. The charge need not set out the manner in which the theft was effected.

(*b*) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

(*c*) A is accused of giving false evidence at a given time and place. The charge must set out that portion of the evidence given by A which is alleged to be false.

(*d*) A is accused of obstructing B, a public servant, in the discharge of his public functions at a given time and place. The charge must set out the manner in which A obstructed B in the discharge of his functions.

(*e*) A is accused of the murder of B at a given time and place. The charge need not state the manner in which A murdered B.

(*f*) A is accused of disobeying a direction of the law with intent to save B from punishment. The charge must set out the disobedience charged and the law infringed.

Words in charge taken in sense of law under which offence is punishable.

224. In every charge words used in describing an offence shall be deemed to have been used in the sense attached to them respectively by the law under which such offence is punishable.

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XIX.—Of the Charge.—Sections 225-232.)

225. (*1*) No error in stating either the offence or the particulars required to be stated in the charge, and no omission to state the offence or those particulars, shall be regarded at any stage of the case as material, unless the accused was *in fact* misled by such error or omission, *and it has occasioned a failure of justice.*

Effect of errors.

(*2*) *Any objection to a charge for want of particularity or for otherwise not conforming to the requirements of this Chapter shall be taken at the earliest opportunity, and, if not so taken, no finding, sentence or order shall be reversed or altered on appeal or revision by any superior Court on the ground of the informality or insufficiency of the charge.*

Illustrations.

(*a*) A is charged, under section 242 of the Indian Penal Code, with "having been in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit," the word "fraudulently" being omitted in the charge. Unless it appears that A was in fact misled by this omission, the error shall not be regarded as material. XLV of 1860.

(*b*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge, or is set out incorrectly. A defends himself, calls witnesses, and gives his own account of the transaction. The Court may infer from this that the omission to set out the manner of the cheating is not material.

(*c*) A is charged with cheating B, and the manner in which he cheated B is not set out in the charge. There were many transactions between A and B, and A had no means of knowing to which of them the charge referred, and offered no defence. The Court may infer from such facts that the omission to set out the manner of the cheating was in this case, a material error.

(*d*) *P.* is charged with the murder of Khoda Baksh on the 21st January, 1882. In fact, the murdered person's name was Haidar Baksh, and the date of the murder was the 20th January, 1882. A was never charged with any murder but one, and had heard the inquiry before the Magistrate, which referred exclusively to the case of Haidar Baksh. The Court may infer from these facts that A was not misled, and that the error in the charge was immaterial.

(*e*) A was charged with murdering Haidar Baksh on the 20th January, 1882, and Khoda Baksh (who tried to arrest him for that murder) on the 21st January, 1882. When charged for the murder of Haidar Baksh, he was tried for the murder of Khoda Baksh. The witnesses present in his defence were witnesses in the case of Haidar Baksh. The Court may infer from this that A was misled and that the error was material.

226. When any person is committed for trial without a charge, or with an imperfect or erroneous charge, the Court, or, in the case of a High Court, the Clerk of the Crown, may frame a charge, or add to or otherwise alter the charge, as the case may be, having regard to the rules contained in this Code as to the form of charges.

Procedure on commitment without charge or with imperfect charge.

227. (*1*) Any Court may alter *or add to* any charge at any time before judgment is pronounced, or, in the case of trials before the Court of Session or High Court, before the verdict of the jury is returned or the opinions of the assessors are expressed.

Court may alter charge.

(*2*) Every such alteration shall be read and explained to the accused.

228. If the charge framed or alteration made under section 226 or section 227 is such that proceeding immediately with the trial is not likely, in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such charge or alteration has been framed or made, proceed with the trial as if the new or altered charge had been the original charge.

When trial may proceed immediately after alteration.

229. If the new or altered charge is such that proceeding immediately with the trial is likely, in the opinion of the Court, to prejudice the accused or the prosecutor as aforesaid, the Court may either direct a new trial or adjourn the trial for such period as may be necessary.

When new trial may be directed, or trial suspended.

230. If the offence stated in the new or altered charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained, unless sanction has been already obtained for a prosecution on the same facts as those on which the new or altered charge is founded.

Stay of proceedings if prosecution of offence in altered charge require previous sanction.

231. Whenever a charge is altered *or added* by the Court after the commencement of the trial, the prosecutor and the accused shall be allowed to recall or re-summon, and examine with reference to such alteration, any witness who may have been examined, *and also to call any further witness whom the Court may think to be material.*

Recall of witnesses when charge altered.

232. (*1*) If any Appellate Court, or the High Court in the exercise of its powers of revision or of its powers under Chapter XXVII, is of opinion that any person convicted of an offence was misled in his defence by the absence of a charge or by an error in the charge, it shall direct a new trial to be had upon a charge framed in whatever manner it thinks fit.

Effect of material error.

(*2*) If the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction

Illustration.

A is convicted of an offence under section 196 of the Indian Penal Code, upon a charge which omits to state that he knew the evidence, which he corruptly used or XLV of 1860.

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XIX.—Of the Charge.—Sections 233-235.)

attempted to use as true or genuine, was false or fabricated. If the Court thinks it probable that A had such knowledge, and that he was misled in his defence by the omission from the charge of the statement that he had it, it shall direct a new trial upon an amended charge; but if it appears probable from the proceedings that A had no such knowledge, it shall quash the conviction.

Joinder of Charges.

Separate charges for distinct offences.

233. For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239.

Illustration.

A is accused of a theft on one occasion, and of causing grievous hurt on another occasion. A must be separately charged and separately tried for the theft and causing grievous hurt.

Three offences of same kind within year may be charged together.

234. (*1*) When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, he may be charged with, and tried at one trial for, any number of them not exceeding three.

(*2*) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code or of any special or local law. XLV of 1860.

(*3*) *When the accused is charged with criminal breach of trust or criminal misappropriation of money, it shall not be necessary to specify the particular items misappropriated or the exact dates of misappropriation.*

Trial for more than one offence.

235. (*1*) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.

Offence falling within two definitions.

(*2*) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

Acts constituting one offence, but constituting when combined a different offence.

(*3*) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for, the offence constituted by such acts when combined, or for any offence constituted by any one, or more, of such acts.

(*4*) Nothing contained in this section shall affect the Indian Penal Code, section 71. XLV of 1860.

Illustrations.

to sub-section (*1*)—

(*a*) A rescues B, a person in lawful custody, and in so doing causes grievous hurt to C, a constable in whose custody B was. A may be charged with, and *convicted of*, offences under sections 225 and 333 of the Indian Penal Code. XLV of 1860.

(*b*) A commits house-breaking by day with intent to commit adultery, and commits, in the house so entered, adultery with B's wife. A may be separately charged with, and convicted of, offences under sections 454 and 497 of the Indian Penal Code. XLV of 1860.

(*c*) A entices B, the wife of C, away from C, with intent to commit adultery with B, and then commits adultery with her. A may be separately charged with, and convicted of, offences under sections 498 and 497 of the Indian Penal Code.

(*d*) A has in his possession several seals, knowing them to be counterfeit and intending to use them for the purpose of committing several forgeries punishable under section 466 of the Indian Penal Code. A may be separately charged with, and convicted of, the possession of each seal under section 473 of the Indian Penal Code. XLV of 1860.

(*e*) With intent to cause injury to B, A institutes a criminal proceeding against him, knowing that there is no just or lawful ground for such proceeding; and also falsely accuses B of having committed an offence, knowing that there is no just or lawful ground for such charges. A may be separately charged with, and convicted of, two offences under section 211 of the Indian Penal Code. XLV of 1860.

(*f*) A, with intent to cause injury to B, falsely accuses him of having committed an offence, knowing that there is no just or lawful ground for such charge. On the trial, A gives false evidence against B, intending thereby to cause B to be convicted of a capital offence. A may be separately charged with, and convicted of, offences under sections 211 and 194 of the Indian Penal Code. XLV of 1860.

(*g*) A, with six others, commits the offences of rioting, grievous hurt and assaulting a public servant endeavouring in the discharge of his duty as such to suppress the riot. A may be separately charged with, and convicted of, offences under sections 147, 325 and 152 of the Indian Penal Code. XLV of 1860.

(*h*) A threatens B, C and D at the same time with injury to their persons with intent to cause alarm to them. A may be separately charged with, and convicted of, each of the three offences under section 506 of the Indian Penal Code. XLV of 1860.

The separate charges referred to in Illustrations (*a*) to (*h*) respectively may be tried at the same time.

to sub-section (*2*)—

(*i*) A wrongfully strikes B with a cane. A may be separately charged with, and convicted of, offences under sections 352 and 323 of the Indian Penal Code. XLV of 1860.

(*j*) Several stolen sacks of corn are made over to A and B, who know they are stolen property, for the purpose of concealing them. A and B thereupon voluntarily assist each other to conceal the sacks at the bottom of a grain-pit. A and B may be separately charged with, and convicted of, offences under sections 411 and 414 of the Indian Penal Code. XLV of 1860

(*k*) A exposes her child with the knowledge that she is thereby likely to cause its death. The child dies in consequence of such exposure. A may be separately charged with, and convicted of, offences under sections 317 and 304 of the Indian Penal Code. XLV of 1860.

(*l*) A dishonestly uses a forged document as genuine evidence, in order to convict B, a public servant, of an offence under section 167 of the Indian Penal Code A may be separately charged with, and convicted of, offences under sections 471 (read with 466) and 196 of the same Code. XLV of 1860.

to sub-section (3)—

(*m*) A commits robbery on B, and in doing so voluntarily causes hurt to him. A may be separately charged with, and convicted of, offences under sections 323, 392 and 394 of the Indian Penal Code. XLV of 1860.

236. If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

Where it is doubtful what offence has been committed.

Illustrations.

(*a*) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(*b*) *A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.*

237. (*1*) If, in the case mentioned in section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

When a person is charged with one offence, he can be convicted of another.

(*2*) *When the accused is charged with an offence, he may be convicted of having attempted to commit that offence, although the attempt is not separately charged.*

Illustration.

A is charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust, or of receiving stolen goods (as the case may be), though he was not charged with such offence.

238. (*1*) When a person is charged with an offence consisting of several particulars, a combination of some only of which constitutes a complete minor offence, and such combination is proved, but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it.

When offence proved included in offence charged.

(2) When a person is charged with an offence and facts are proved which reduce it to a minor offence, he may be convicted of the minor offence, although he is not charged with it.

(3) Nothing in this section shall be deemed to authorise a conviction of any offence referred to in section 198 or section 199 when no complaint has been made as required by that section.

Illustrations.

(*a*) A is charged, under section 407 of the Indian Penal Code, with criminal breach of trust in respect of property entrusted to him as a carrier. It appears that he did commit criminal breach of trust under section 406 in respect of the property, but that it was not entrusted to him as a carrier. He may be convicted of criminal breach of trust under section 406. XLV of 1860.

(*b*) A is charged, under section 325 of the Indian Penal Code, with causing grievous hurt. He proves that he acted on grave and sudden provocation. He may be convicted under section 335 of that Code. XLV of 1860.

239. When more persons than one are accused of the same offence or of different offences commited in the same transaction, or when one person is accused of committing any offence, and another of abetment of, or attempt to commit, such offence, they may be charged and tried together or separately, as the Court thinks fit; and the provisions contained in the former part of this chapter shall apply to all such charges.

What persons may be charged jointly.

Illustrations.

(*a*) A and B are accused of the same murder. A and B may be charged and tried together for the murder.

(*b*) A and B are accused of a robbery, in the course of which A commits a murder with which B has nothing to do. A and B may be tried together on a charge, charging both of them with the robbery, and A alone with the murder.

(*c*) A and B are both charged with a theft, and B is charged with two other thefts committed by him in the course of the same transaction. A and B may be both tried together on a charge, charging both with the one theft, and B alone with the two other thefts.

240. When *a charge containing more heads than one is* made against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own accord may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges, unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.

Withdrawal of remaining charges on conviction on one of several charges.

CHAPTER XX.

OF THE TRIAL OF SUMMONS-CASES BY MAGISTRATES.

241. The following procedure shall be observed by Magistrates in the trial of summons-cases.

Procedure in summons-cases.

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XX.—Of the Trial of Summons-cases by Magistrates.—Sections 242-250.)

242. When the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked if he has any cause to show why he should not be convicted; but it shall not be necessary to frame a formal charge.

Substance of accusation to be stated.

243. If the accused admits that he has committed the offence *or offences* of which he is accused *or any of them*, his admission shall be recorded as nearly as possible in the words used by him; and, if he shows no sufficient cause why he should not be convicted, the Magistrate *may* convict him accordingly.

Conviction on admission of truth of accusation.

244. (*1*) If the accused does not make such admission, the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defence.

Procedure when no such admission is made.

(*2*) The Magistrate may, if he thinks fit, on the application of the complainant or accused, issue process to compel the attendance of any witness or the production of any document or other thing.

(*3*) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses, incurred in attending for the purposes of the trial, be deposited in Court.

245. (*1*) If the Magistrate upon taking the evidence referred to in section 244 and such further evidence (if any) as he may, of his own motion, cause to be produced, and (if he thinks fit) examining the accused, finds the accused not guilty, he shall record an order of acquittal.

Acquittal.

(*2*) If he finds the accused guilty, he shall pass sentence upon him according to law.

Sentence.

246. A Magistrate may, under section 243 or section 245, convict the accused of any offence triable under this chapter which from the facts admitted or proved he appears to have committed, whatever may be the nature of the complaint or summons.

Finding not limited by complaint or summons.

247. If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day.

Non-appearance of complainant.

248. If a complainant, at any time before a final order is passed in any case under this chapter, satisfies the Magistrate that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to withdraw the same, and shall thereupon acquit the accused.

Withdrawal of complaint.

249. In any case instituted otherwise than upon complaint, a Presidency Magistrate, a Magistrate of the first class, or, with the previous sanction of the District Magistrate, any other Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment either of acquittal or conviction, and may thereupon release the accused.

Power to stop proceedings when no complainant.

250 (*1*) If, in any case instituted by complaint as defined in this Code, or upon information given to a police-officer or to a Magistrate, a person is accused before a Magistrate of any offence triable by a Magistrate, and the Magistrate by whom the case is *instituted* discharges or acquits the accused and is satisfied that the accusation against him was frivolous or vexatious, the Magistrate may, in his discretion, by his order of discharge or acquittal, direct the person upon whose complaint or information the accusation was made to pay to the accused, or to each of the accused where there are more than one, such compensation, not exceeding fifty rupees, as the Magistrate thinks fit: [Act X of 1882, s. 560.]

Frivolous or vexatious accusations.

Provided that, before making any such direction, the Magistrate shall—

(*a*) record and consider any objection which the complainant or informant may urge against the making of the direction, and,

(*b*) if the Magistrate directs any compensation to be paid, state in writing, in his order of discharge or acquittal, his reasons for awarding the compensation.

(*2*) Compensation of which a Magistrate has ordered payment under sub-section (*1*) shall be recoverable as if it were a fine:

Provided that, if it cannot be recovered, the imprisonment to be awarded shall be simple, and for such term, not exceeding thirty days, as the Magistrate directs.

(*3*) A complainant or informant who has been ordered under sub-section (*1*) by a Magistrate of the second or third class to pay compensation to an accused person may appeal from the order, in so far as the order relates to the payment of the compensation, as if such complainant or informant had been convicted on a trial held by such Magistrate.

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XXI.—Of the Trial of Warrant-cases by Magistrates.—Sections 251-259.)

(4) Where an order for payment of compensation to an accused person is made in a case which is subject to appeal under sub-section (3), the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed, or, if an appeal is presented, before the appeal has been decided.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any compensation paid or recovered under this section.

CHAPTER XXI.

OF THE TRIAL OF WARRANT-CASES BY MAGISTRATES.

Procedure in warrant-cases.

251. The following procedure shall be observed by Magistrates in the trial of warrant-cases.

Evidence for prosecution.

252. (1) When the accused appears or is brought before a Magistrate, such Magistrate shall proceed to hear the complainant (if any) and take all such evidence as may be produced in support of the prosecution.

(2) The Magistrate shall ascertain, from the complainant or otherwise, the names of any persons likely to be acquainted with the facts of the case and to be able to give evidence for the prosecution, and shall summon to give evidence before himself such of them as he thinks necessary.

Discharge of accused.

253. (1) If, upon taking all the evidence referred to in section 252, and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.

(2) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

Charge to be framed when offence appears proved.

254. If, when such evidence and examination have been taken and made, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.

Plea.

255. (1) The charge shall then be read and explained to the accused, and he shall be asked whether he is guilty or has any defence to make.

(2) If the accused pleads guilty, the Magistrate shall record the plea, and may in his discretion convict him thereon.

Defence.

256. (1) If the accused refuses to plead or does not plead, or claims to be tried, he shall be called upon to enter upon his defence and to produce his evidence, and shall, at any time while he is making his defence, be allowed to recall and cross-examine any witness for the prosecution present in the Court or its precincts *who has not previously been cross-examined as to the facts constituting the charge.*

(2) If the accused puts in any written statement, the Magistrate shall file it with the record.

Process for compelling production of evidence at instance of accused.

257. (1) If the accused applies to the Magistrate to issue any process for compelling the attendance of any witness (whether he has or has not been previously examined in the case) for the purposes of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay, or for defeating the ends of justice. Such ground shall be recorded by him in writing.

(2) *When the accused has cross-examined or had the opportunity of cross-examining any witness, the attendance of such witness shall not be compelled under this section unless the Magistrate is satisfied that it is necessary for the purposes of justice.*

(3) The Magistrate may, before summoning any witness on such application, require that his reasonable expenses incurred in attending for the purposes of the trial be deposited in Court.

Acquittal.

258. (1) If in any case under this chapter in which a charge has been framed the Magistrate finds the accused not guilty, he shall record an order of acquittal.

Conviction.

(2) If in any such case the Magistrate finds the accused guilty, he shall pass sentence upon him according to law.

Absence of complainant.

259. When the proceedings have been instituted upon complaint, and upon any day fixed for the hearing of the case the complainant is absent, and the offence may be lawfully compounded, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XXII.—Of Summary Trials.—Sections 260-263.)

CHAPTER XXII.

OF SUMMARY TRIALS.

Power to try summarily.

260. (*1*) Notwithstanding anything contained in this Code—

(*a*) the District Magistrate,

(*b*) any Magistrate of the first class specially empowered in this behalf by the Local Government, and

(*c*) any Bench of Magistrates invested with the powers of a Magistrate of the first class and specially empowered in this behalf by the Local Government,

may, *if he or they think fit*, try in a summary way all or any of the following offences:—

(*a*) offences not punishable with death, transportation or imprisonment for a term exceeding six months;

(*b*) offences relating to weights and measures under sections 264, 265 and 266 of the Indian Penal Code; XLV of 1860.

(*c*) hurt, under section 323 of the same Code;

(*d*) theft, under section 379, 380 or 381 of the same Code, where the value of the property stolen does not exceed fifty rupees;

(*e*) receiving or retaining stolen property, under section 411 of the same Code, where the value of such property does not exceed fifty rupees;

(*f*) assisting in the concealment or disposal of stolen property, under section 414 of the same Code, where the value of such property does not exceed fifty rupees;

(*g*) mischief, under section 427 of the same Code;

(*h*) house-trespass, under section 448 of the same Code;

(*i*) insult with intent to provoke a breach of the peace, under section 504, and criminal intimidation, under section 506, of the same Code;

(*j*) abetment of any of the foregoing offences;

(*k*) an attempt to commit any of the foregoing offences, when such attempt is an offence;

I of 1871. (*l*) *complaints under the Cattle-trespass Act, 1871*:

Provided that no case in which a District Magistrate exercises the special powers conferred by section 34 shall be tried in a summary way.

(*2*) *When in the course of a summary trial it appears to the Magistrate or Bench that the case is one which is of a character which renders it undesirable that it should be tried summarily, the Magistrate or Bench shall recall any witnesses who may have been examined and proceed to re-hear the case in manner provided by this Code.*

Power to invest Bench of Magistrates invested with less power.

261. The Local Government may confer on any Bench of Magistrates invested with the powers of a Magistrate of the second or third class power to try summarily all or any of the following offences:—

(*a*) offences against the Indian Penal Code, XLV of 1860. sections 277, 278, 279, 285, 286, 289, 290, 292, 293, 294, 323, 334, 336 341, 352, 426 and 447;

(*b*) offences against Municipal Acts, and the conservancy clauses of Police Acts punishable only with fine, or with imprisonment for a term not exceeding one month;

(*c*) abetment of any of the foregoing offences;

(*d*) an attempt to commit any of the foregoing offences, when such attempt is an offence.

Procedure for summons and warrant-cases applicable.

262. (*1*) In trials under this chapter, the procedure prescribed for summons cases shall be followed in summons-cases, and the procedure prescribed for warrant-cases shall be followed in warrant-cases, except as hereinafter mentioned.

Limit of imprisonment.

(*2*) No sentence of imprisonment for a term exceeding three months shall be passed in the case of any conviction under this chapter.

Record in cases where there is no appeal.

263. In cases where no appeal lies, the Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge; but he or they shall enter in such form as the Local Government may direct the following particulars:—

(*a*) the serial number;

(*b*) the date of the commission of the offence;

(*c*) the date of the report or complaint;

(*d*) the name of the complainant (if any);

(*e*) the name, parentage and residence of the accused;

(*f*) the offence complained of and the offence (if any) proved, and in cases coming under clause (*d*), clause (*e*) or clause (*f*) of *sub-section* (*1*) *of* section 260 the value of the property in respect of which the offence has been committed;

(*g*) the plea of the accused and his examination (if any);

(*h*) the finding, and, in the case of a conviction, a brief statement of the reasons therefor;

(*i*) the sentence or other final order; and

(*j*) the date on which the proceedings terminated.

Record in appealable cases.

264. (*1*) In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall, before passing sentence, record a judgment embodying the substance of the evidence and also the particulars mentioned in section 263.

(*2*) Such judgment shall be the only record in cases coming within this section.

Language of record and judgment.

265. (*1*) Records made under section 263 and judgments recorded under section 264 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.

Bench may be authorised to employ clerk.

(*2*) The Local Government may authorise any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in his behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.

(*3*) *If no such authorisation be given, the record prepared by a member of the Bench and signed as aforesaid shall be the proper record.*

(*4*) *If the Bench differ in opinion, the dissentient members may write a separate judgment.*

CHAPTER XXIII

OF TRIALS BEFORE HIGH COURTS AND COURTS OF SESSION.

A.—Preliminary.

"High Court" defined.

266. In this chapter, except in sections 276 and 307, *and in Chapter XVIII*, the expression "High Court" means a High Court of Judicature established or to be established under the *Indian High Courts Act, 1861*, and includes the Chief Court of the Punjab, the Court of the Recorder of Rangoon and such other Courts as the Governor General in Council may, by notification in the Gazette of India, declare to be High Courts for the purposes of this chapter. 24 & 25 Vict., c. 104.

Trials before High Court to be by jury.

267. All trials under this chapter before a High Court shall be by jury;

and, notwithstanding anything herein contained, in all criminal cases transferred to a High Court under this Code or under the Letters Patent of any High Court established under the *Indian High Courts Act, 1861*, the trial may, if the High Court so directs, be by jury. 24 & 25 Vict., c. 104.

Trials before Court of Session to be by jury or with assessors.

268. All trials before a Court of Session shall be either by jury, or with the aid of assessors.

Local Government may order trials before Court of Session to be by jury.

269. (*1*) The Local Government may, with the previous sanction of the Governor General in Council, by order in the official Gazette, direct that the trial of all offences, or of any particular class of offences, before any Court of Session, shall be by jury in any district, and may, with the like sanction revoke or alter such order.

(*2*) *The Local Government may by general or special order in the official Gazette direct at what place or places the Court of Session shall hold its sitting, and may from time to time rescind or alter any order so made; but until such order be made, the Courts of Session shall hold their sittings as heretofore.*

(*3*) The Local Government, by like order, may also declare that, in the case of any district in which the trial of any offence is to be by jury, the trial of the offence shall, if the Judge, on application made to him or of his own motion, so directs, be by jurors summoned from a special jury list, and may revoke or alter such order.

(*4*) When the accused is charged at the same trial with several offences of which some are and some are not triable by jury, he shall be tried by jury for such of those offences as are triable by jury, and by the Court of Session, with the aid of the jurors as assessors, for such of them as are not triable by jury.

Trial before Court of Session to be conducted by Public Prosecutor.

270. In every trial before a Court of Session the prosecution shall be conducted by a Public Prosecutor.

B.—Commencement of Proceedings.

Commencement of trial.

271. (*1*) When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XXIII.—Of Trials before High Courts and Courts of Session.—Sections 272-278.)

he is guilty of the offence charged, or claims to be tried.

Plea of guilty.

(2) If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

Refusal to plead or claim to be tried.

272. If the accused refuses to, or does not, plead, or if he claims to be tried, the Court shall proceed to choose jurors or assessors as hereinafter directed and to try the case:

Trial by same jury or assessors of several offenders in succession.

Provided that, subject to the right of objection hereinafter mentioned, the same jury may try, or the same assessors may aid in the trial of, as many accused persons successively as the Court thinks fit.

Entry on sustainable charges.

273. (1) In trials before the High Court, when it appears to the High Court, at any time before the commencement of the trial of the person charged, that any charge or any portion thereof is clearly unsustainable, the Judge may make on the charge an entry to that effect.

Effect of entry.

(2) Such entry shall have the effect of staying proceedings upon the charge or portion of the charge, as the case may be.

C.—Choosing a Jury.

Number of jury.

274. (1) In trials before the High Court the jury shall consist of nine persons.

(2) In trials by jury before the Court of Session the jury shall consist of such uneven number, not being less than three, or more than nine, as the Local Government, by order applicable to any particular district or to any particular class of offences in that district, may direct.

Jury for trial of persons not Europeans or Americans before Court of Session.

275. In a trial by jury before the Court of Session of a person not being an European or an American, a majority of the jury shall, if he so desires, consist of persons who are neither Europeans nor Americans.

Jurors to be chosen by lot.

276. The jurors shall be chosen by lot from the persons summoned to act as such, in such manner as the High Court may from time to time by rule direct:

Provided that—

Existing practice maintained;

first, pending the issue under this section of rules for any Court, the practice now prevailing in such Court in respect to the choosing of jurors shall be followed;

persons not summoned when eligible;

secondly, in case of a deficiency of persons summoned, the number of jurors required may, with the leave of the Court, be chosen from such other persons as may be present;

trials before special jurors.

thirdly, in the presidency-towns—

(*a*) if the accused person is charged with having committed an offence punishable with death, or

(*b*) if in any other case a Judge of the High Court so directs,

the jurors shall be chosen from the special jury list hereinafter prescribed; and

fourthly, in any district for which the Local Government has declared that the trial of certain offences may be by special jury, the jurors shall in any case in which the Judge so directs, be chosen from the special jury list prescribed in section 325.

Names of jurors to be called.

277. (1) As each juror is chosen, his name shall be called aloud, and, upon his appearance, the accused shall be asked if he objects to be tried by such juror.

Objection to jurors.

(2) Objection may then be taken to such juror by the accused or by the prosecutor, and the grounds of objection shall be stated:

Objection without grounds stated.

Provided that, in the High Court, objections without grounds stated shall be allowed to the number of eight on behalf of the Crown and eight on behalf of the person or all the persons charged.

Grounds of objection.

278. Any objection taken to a juror on any of the following grounds, if made out to the satisfaction of the Court, shall be allowed—

(*a*) some presumed or actual partiality in the juror;

(*b*) some personal ground, such as alienage, deficiency in the qualification required by any law or rule having the force of law for the time being in force, or being under the age of twenty-one or above the age of sixty years;

(*c*) his having by habit or religious vows relinquished all care of worldly affairs;

(*d*) his holding any office in or under the Court;

(*e*) his executing any duties of police or being entrusted with police duties;

(*f*) his having been convicted of any offence which, in the opinion of the Court, renders him unfit to serve on the jury;

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XXIII.—Of Trials before High Courts and Courts of Session.—Sections 279-289.)

(*g*) his inability to understand the language in which the evidence is given, or when such evidence is interpreted the language in which it is interpreted;

(*h*) any other circumstance which, in the opinion of the Court, renders him improper as a juror.

Decision of objection.

279. (*1*) Every objection taken to a juror shall be decided by the Court, and such decision shall be recorded and be final.

Supply of place of juror against whom objection allowed.

(*2*) If the objection is allowed, the place of such juror shall be supplied by any other juror attending in obedience to a summons and chosen in manner provided by section 276, or if there is no such other juror present, then by any other person present in the Court whose name is on the list of jurors, or whom the Court considers a proper person to serve on the jury:

Provided that no objection to such juror or other person is taken under section 278 and allowed.

Foreman of jury.

280. (*1*) When the jurors have been chosen, they shall appoint one of their number to be foreman.

(*2*) The foreman shall preside in the debates of the jury, deliver the verdict of the jury, and ask any information from the Court that is required by the jury or any of the jurors.

(*3*) If a majority of the jury do not, within such time as the Judge thinks reasonable, agree in the appointment of a foreman, he shall be appointed by the Court.

Swearing of jurors.

281. When the foreman has been appointed, the jurors shall be sworn under the Indian Oaths Act, 1873.

X of 1873.

Procedure when juror ceases to attend, etc.

282. (*1*) If, in the course of a trial by jury, at any time before the return of the verdict, any juror, from any sufficient cause, is prevented from attending throughout the trial, or if any juror absents himself, and it is not practicable to enforce his attendance, or if it appears that any juror is unable to understand the language in which the evidence is given, or, when such evidence is interpreted, the language in which it is interpreted, a new juror shall be added, or the jury shall be discharged and a new jury chosen.

(*2*) In each of such cases the trial shall commence anew.

Discharge of jury in case of sickness of prisoner.

283. The Judge may also discharge the jury whenever the prisoner becomes incapable of remaining at the bar.

D.—Choosing Assessors.

Assessors how chosen.

284. When the trial is to be held with the aid of assessors, two or more shall be chosen, as the Judge thinks fit, from the persons summoned to act as such.

Procedure when assessor is unable to attend.

285. (*1*) If, in the course of a trial with the aid of assessors, at any time before the finding, any assessor is, from any sufficient cause, prevented from attending throughout the trial, or absents himself, and it is not practicable to enforce his attendance, the trial shall proceed with the aid of the other assessor or assessors.

(*2*) If all the assessors are prevented from attending, or absent themselves, the proceedings shall be stayed, and a new trial shall be held with the aid of fresh assessors.

E.—Trial to Close of Cases for Prosecution and Defence.

Opening case for prosecution.

286. (*1*) When the jurors or assessors have been chosen, the prosecutor shall open his case by reading from the Indian Penal Code or other law the description of the offence charged, and stating shortly by what evidence he expects to prove the guilt of the accused. XLV of 1860.

Examination of witnesses.

(*2*) The prosecutor shall then examine his witnesses.

Examination of accused before Magistrate to be evidence.

287. The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the prosecutor and read as evidence.

Evidence given at preliminary inquiry admissible.

288. The evidence of a witness duly taken in the presence of the accused before the committing Magistrate may, in the discretion of the presiding Judge, if such witness is produced and examined, be treated as evidence in the case.

Procedure after examination of witnesses for prosecution.

289. (*1*) When the examination of the witnesses for the prosecution and the examination (if any) of the accused are concluded, the accused shall be asked whether he means to adduce evidence.

(*2*) If he says that he does not, the prosecutor may sum up his case; and, if the Court considers that there is no evidence that the accused committed the offence, it may then, in a case

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XXIII.—Of Trials before High Courts and Courts of Session.—Sections 290-297.)

tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

(3) If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is no evidence that the accused committed the offence, the Court may then, in a case tried with the aid of assessors, record a finding, or, in a case tried by a jury, direct the jury to return a verdict, of not guilty.

(4) If the accused, or any one of several accused, says that he means to adduce evidence, and the Court considers that there is evidence that he committed the offence, or if, on his saying that he does not mean to adduce evidence, the prosecutor sums up his case and the Court considers that there is evidence that the accused committed the offence, the Court shall call on the accused to enter on his defence.

Defence.

290. The accused or his pleader may then open his case, stating the facts or law on which he intends to rely, and making such comments as he thinks necessary on the evidence for the prosecution. He may then examine his witnesses (if any) and after their cross-examination and re-examination (if any) may sum up his case.

Right of accused as to examination and summoning of witnesses.

291. The accused shall be allowed to examine any witness not previously named by him, if such witness is in attendance; but he shall not, except as provided in sections 211 and 231, be entitled of right to have any witness summoned, other than the witnesses named in the list delivered to the Magistrate by whom he was committed for trial.

Prosecutor's right of reply.

292. If the accused, or any of the accused, has stated, when asked under section 289, that he means to adduce evidence, the prosecutor shall be entitled to reply. *But if the accused does not then so state, the prosecutor shall not be entitled to reply.*

View by jury or assessors.

293. (1) Whenever the Court thinks that the jury or assessors should view the place in which the offence charged is alleged to have been committed, or any other place in which any other transaction material to the trial is alleged to have occurred, the Court shall make an order to that effect, and the jury or assessors shall be conducted in a body, under the care of an officer of the Court, to such place, which shall be shown to them by a person appointed by the Court.

(2) Such officer shall not, except with the permission of the Court, suffer any other person to speak to, or hold any communication with, any of the jury or assessors, and, unless the Court otherwise directs, they shall, when the view is finished, be immediately conducted back into Court.

When juror or assessor may be examined.

294. If a juror or assessor is personally acquainted with any relevant fact, it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined and re-examined in the same manner as any other witness.

Jury or assessors to attend at adjourned sitting.

295. If a trial is adjourned, the jury or assessors shall attend at the adjourned sitting, and at every subsequent sitting, until the conclusion of the trial.

Locking up jury.

296. The High Court may, from time to time, make rules as to keeping the jury together during a trial before such Court lasting for more than one day; and, subject to such rules, the presiding Judge may order whether and in what manner the jurors shall be kept together under the charge of an officer of the Court, or whether they shall be allowed to return to their respective homes.

F.—Conclusion of Trial in cases tried by Jury.

Charge to jury.

297. In cases tried by jury, when the case for the defence and the prosecutor's reply (if any) are concluded, the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence, and laying down the law by which the jury are to be guided.

Duty of Judge.

298. (1) In such cases it is the duty of the Judge—

(a) to decide all questions of law arising in the course of the trial, and especially all questions as to the relevancy of facts which it is proposed to prove, and the admissibility of evidence or the propriety of questions asked by or on behalf of the parties; and, in his discretion, to prevent the production of inadmissible evidence, whether it is or is not objected to by the parties;

(b) to decide upon the meaning and construction of all documents given in evidence at the trial;

(c) to decide upon all matters of fact which it may be necessary to prove in order to enable evidence of particular matters to be given;

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XXIII.—Of Trials before High Courts and Courts of Session.—Sections 299-306.)

(*d*) to decide whether any question which arises is for himself or for the jury, and upon this point his decision shall bind the jurors.

(*2*) The Judge may, if he thinks proper, in the course of his summing up, express to the jury his opinion upon any question of fact, or upon any question of mixed law and fact, relevant to the proceeding.

Illustrations.

(*a*) It is proposed to prove a statement made by a person not being a witness in the case, on the ground that circumstances are proved which render evidence of such statement admissible.

It is for the Judge, and not for the jury, to decide whether the existence of those circumstances has been proved.

(*b*) It is proposed to give secondary evidence of a document the original of which is alleged to have been lost or destroyed.

It is the duty of the Judge to decide whether the original has been lost or destroyed.

Duty of jury.

299. It is the duty of the jury—

(*a*) to decide which view of the facts is true and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned;

(*b*) to determine the meaning of all technical terms (other than terms of law) and words used in an unusual sense which it may be necessary to determine, whether such words occur in documents or not;

(*c*) to decide all questions which according to law are to be deemed questions of fact;

(*d*) to decide whether general indefinite expressions do or do not apply to particular cases, unless such expressions refer to legal procedure or unless their meaning is ascertained by law, in either of which cases it is the duty of the Judge to decide their meaning.

Illustrations.

A is tried for the murder of B.

It is the duty of the Judge to explain to the jury the distinction between murder and culpable homicide, and to tell them under what views of the facts A ought to be convicted of murder, or of culpable homicide, or to be acquitted.

It is the duty of the jury to decide which view of the facts is true, and to return a verdict in accordance with the direction of the Judge, whether that direction is right or wrong, and whether they do or do not agree with it.

(*b*) The question is whether a person entertained a reasonable belief on a particular point,—whether work was done with reasonable skill or due diligence.

Each of these is a question for the jury.

Retirement to consider.

300. In cases tried by jury, after the Judge has finished his charge, the jury may retire to consider their verdict.

Except with the leave of the Court, no person other than a juror shall speak to, or hold any communication with, any member of such jury.

Delivery of verdict.

301. When the jury have considered their verdict the foreman shall inform the Judge what is their verdict, or what is the verdict of a majority.

Procedure where jury differ.

302. If the jury are not unanimous, the Judge may require them to retire for further consideration. After such a period as the Judge considers reasonable, the jury may deliver their verdict, although they are not unanimous.

Verdict to be given on each charge.
Judge may question jury.

303. (*1*) Unless otherwise ordered by the Court, the jury shall return a verdict on all the *heads of charge* on which the accused is tried, and the Judge may ask them such questions as are necessary to ascertain what their verdict is.

Questions and answers to be recorded.

(*2*) Such questions and the answers to them shall be recorded.

Amending verdict.

304. When by accident or mistake a wrong verdict is delivered, the jury may, before or immediately after it is recorded, amend the verdict, and it shall stand as ultimately amended.

Verdict in High Court when to prevail.

305. (*1*) When in a case tried before a High Court the jury are unanimous in their opinion, or when as many as six are of one opinion and the Judge agrees with them, the Judge shall give judgment in accordance with such opinion.

(*2*) When in any such case the jury are satisfied that they will not be unanimous, but six of them are of one opinion, the foreman shall so inform the Judge.

Discharge of jury in other cases.

(*3*) If the Judge disagrees with the majority, he shall at once discharge the jury.

(*4*) If there are not so many as six who agree in opinion, the Judge shall, after the lapse of such time as he thinks reasonable, discharge the jury.

Verdict in Court of Session when to prevail.

306. (*1*) When in a case tried before the Court of Session the Judge does not think it necessary to express disagreement with the verdict of the jurors or of a majority of the jurors, he shall give judgment accordingly.

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XXIII.—Of Trials before High Courts and Courts of Session.—Sections 307-311.)

(2) If the accused is acquitted, the Judge shall record judgment of acquittal. If the accused is convicted, the Judge shall pass sentence on him according to law.

Procedure where Sessions Judge disagrees with verdict.

307. (1) If in any such case the Sessions Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the *heads of* charge on which the accused has been tried, and is clearly of opinion that it is necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed.

(2) Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which the accused has been tried, and subject thereto it shall, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury, either remand the accused to custody or admit him to bail.

(3) In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal; but it may acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session.

G.—Re-trial of Accused after Discharge of Jury.

Re-trial of accused after discharge of jury.

308. Whenever the jury is discharged the accused shall be detained in custody or on bail (as the case may be), and shall be tried by another jury, unless the Judge considers that he should not be re-tried, in which case the Judge shall make an entry to that effect on the charge, and such entry shall operate as an acquittal.

H.—Conclusion of Trial in Cases tried with Assessors.

Delivery of opinions of assessors.

309. (1) When, in a case tried with the aid of assessors, the case for the defence and the prosecutor's reply (if any) are concluded, the Court may sum up the evidence for the prosecution and defence, and shall then require each of the assessors to state his opinion orally, and shall record such opinion.

(2) The Judge shall then give judgment, but in doing so shall not be bound to conform to the opinions of the assessors.

Judgment.

(3) If the accused is convicted, the Judge shall pass sentence on him according to law.

I.—Procedure in Case of Previous Conviction.

Procedure in case of previous conviction.

310. In the case of a trial by jury or with the aid of assessors, where the accused is charged with an offence committed after a previous conviction, for any offence, the procedure laid down in sections 271, 286, 305, 306 and 309 shall be modified as follows:—

(*a*) the part of the charge stating the previous conviction shall not be read out in Court, nor shall the accused be asked whether he has been previously convicted as alleged in the charge unless and until he has either pleaded guilty to, or been convicted of, the subsequent offence:

(*b*) if he pleads guilty to, or is convicted of, the subsequent offence, he shall then be asked whether he has been previously convicted as alleged in the charge;

(*c*) *when the trial is held with the aid of assessors, judgment in writing need not be given until the question of previous conviction has been disposed of:*

(*d*) if he answers that he has been so previously convicted, the Judge may proceed to pass sentence on him accordingly; but, if he denies that he has been so previously convicted, or refuses to, or does not, answer such question, the jury, or the Court and the assessors (as the case may be), shall then *hear evidence* concerning such previous conviction, and in such case (where the trial is by jury) it shall not be necessary to swear the jurors again.

When evidence of previous conviction may be given.

311. Notwithstanding anything in the *last preceding* section, evidence of the previous conviction may be given at the trial for the subsequent offence, if the fact of the previous conviction is relevant under the provisions of the Indian Evidence Act, 1872. [Act X of 1882, s. 310, last para.] I of 1872.

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XXIII.—Of Trials before High Courts and Courts of Session.—Sections 312-319.)

J.—List of Jurors for High Court, and summoning Jurors for that Court.

Number of special jurors.

312. The names of not more than four hundred persons shall at any one time be entered in the special jurors' list.

Lists of common and special jurors.

313. (*1*) The Clerk of the Crown shall, before the first day of April in each year, and subject to such rules as the High Court from time to time prescribes, prepare—

(*a*) a list of all persons liable to serve as common jurors; and

(*b*) a list of persons liable to serve as special jurors only.

(*2*) Regard shall be had, in the preparation of the latter list, to the property, character and education of the persons whose names are entered therein.

(*3*) No person shall be entitled to have his name entered in the special jurors' list merely because he may have been entered in the special jurors list for a previous year.

(*4*) The Governor General in Council in the case of the High Court at *Fort William* and, in the case of other High Courts, the Local Government, may exempt any salaried officer of Government from serving as a juror.

Discretion of officer preparing lists.

(*5*) The Clerk of the Crown shall, subject to such rules as aforesaid, have full discretion to prepare the said lists as seems to him to be proper, and there shall be no appeal from, or review of, his decision.

Publication of lists, preliminary and revised.

314. (*1*) Preliminary lists of persons liable to serve as common jurors and as special jurors, respectively, signed by the Clerk of the Crown, shall be published once in the local official Gazette before the fifteenth day of April next after their preparation.

(*2*) Revised lists of persons liable to serve as common jurors and special jurors, respectively, signed as aforesaid, shall be published once in the local official Gazette before the first day of May next after their preparation.

(*3*) Copies of the said lists shall be affixed to some conspicuous part of the court-house.

Number of jurors to be summoned in presidency-towns.

315. (*1*) Out of the persons named in the revised lists aforesaid, there shall be summoned for each sessions in each presidency-town at least twenty-seven of those who are liable to serve on special juries, and fifty-four of those who are liable to serve on common juries.

(*2*) No person shall be so summoned more than once in six months unless the number cannot be made up without him.

Supplementary summons.

(*3*) If, during the continuance of any sessions it appears that the number of persons so summoned is not sufficient, such number as may be necessary of other persons liable to serve as aforesaid shall be summoned for such sessions.

Summoning jurors outside the presidency-towns.

316. Whenever a High Court has given notice of its intention to hold sittings at any place outside the presidency-towns for the exercise of its original criminal jurisdiction, the Court of Session at such place shall, subject to any direction which may be given by the High Court, summon a sufficient number of jurors from its own list, in the manner hereinafter prescribed for summoning jurors to the Court of Session.

Military jurors.

317. (*1*) In addition to the persons so summoned as jurors, the said Court of Session shall, if it thinks needful, after communication with the commanding officer, cause to be summoned such number of commissioned and non-commissioned officers in Her Majesty's Army resident within ten miles of its place of sitting as the Court considers to be necessary to make up the juries required for the trial of persons charged with offences before the High Court as aforesaid.

(*2*) All officers so summoned shall be liable to serve on such juries notwithstanding anything contained in this Code; but no such officer shall be summoned whom his commanding officer desires to have excused on the ground of urgent military duty, or for any other special military reason.

Failure of jurors to attend.

318. Any person summoned under section 315, section 316 or section 317, who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Judge, or fails to attend after an adjournment of the Court after being ordered to attend, shall be deemed guilty of a contempt and be liable, by order of the Judge, to such fine as he thinks fit; and, in default of payment of such fine, to imprisonment *for a term not exceeding six months* in the civil jail until the fine is paid:

Provided that the Court may in its discretion remit any fine or imprisonment so imposed.

K.—List of Jurors and Assessors for Court of Session, and summoning Jurors and Assessors for that Court.

Liability to serve as jurors or assessors.

319. All male persons between the ages of twenty-one and sixty shall, except as next hereinafter mentioned, be liable to

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XXIII.—Of Trials before High Courts and Courts of Session.—Sections 320-325.)

serve as jurors or assessors at any trial held within the district in which they reside,

or, if the Local Government, on consideration of local circumstances, has fixed any smaller area in this behalf, within the area so fixed.

Exemptions.

320. The following persons are exempt from liability to serve as jurors or assessors, namely :—

(*a*) officers in civil employ superior in rank to a District Magistrate ;

(*b*) Judges ;

(*c*) Commissioners and Collectors of Revenue or Customs ;

(*d*) *police-officers and* persons engaged in the Preventive Service in the Customs Department ;

(*e*) persons engaged in the collection of the revenue whom the Collector thinks fit to exempt on the ground of official duty ;

(*f*) persons actually officiating as priests or ministers of their respective religions ;

(*g*) persons in Her Majesty's Army, except when, by any law in force for the time being, they are specially made liable to serve as jurors or assessors ;

(*h*) Surgeons and others who openly and constantly practise the medical profession ;

(*i*) persons employed in the Post-office and Telegraph Departments ;

(*j*) persons exempted from personal appearance in Court under the provisions of the Code of Civil Procedure, sections 640 and 641 ; XIV of 1882.

(*k*) other persons exempted by the Local Government from liability to serve as jurors or assessors.

List of jurors and assessors.

321. (*1*) The Sessions Judge, and the Collector of the district or such other officer as the Local Government appoints in this behalf, shall prepare and make out in alphabetical order a list of persons liable to serve as jurors or assessors and qualified in the judgment of the Sessions Judge and Collector or other officer as aforesaid to serve as such, and not likely to be successfully objected to under section 278, clauses (*b*) to (*h*), both inclusive.

(*2*) The list shall contain the name, place of abode and quality or business of every such person ; and if the person is an European or an American, the list shall mention the race to which he belongs.

Publication of list.

322. Copies of such list shall be stuck up in the office of the Collector or other officer as aforesaid, and in the court-houses of the District Magistrate and of the District Court, and in some conspicuous place in the town or towns in or near which the persons named in the list reside.

Objections to list.

323. To every such copy shall be subjoined a notice stating that objections to the list will be heard and determined by the Sessions Judge and Collector or other officer as aforesaid, at the sessions court-house, and at a time to be mentioned in the notice.

Revision of list.

324. (*1*) For the hearing of such objections the Sessions Judge shall sit with the Collector or other officer as aforesaid, and shall, at the time and place mentioned in the notice, revise the list and hear the objections (if any) of persons interested in the amendment thereof, and shall strike out the name of any person not suitable in their judgment to serve as a juror or as an assessor, or who may establish his right to any exemption from service given by section 320, and insert the name of any person omitted from the list whom they deem qualified for such service.

(*2*) In the event of a difference of opinion between the Sessions Judge and the Collector or other officer as aforesaid, the name of the proposed juror or assessor shall be omitted from the list.

(*3*) A copy of the revised list shall be signed by the Sessions Judge and Collector or other officer as aforesaid and sent to the Court of Session.

(*4*) Any order of the Sessions Judge and Collector or other officer as aforesaid in preparing and revising the list shall be final.

(*5*) Any exemption not claimed under this section shall be deemed to be waived until the list is next revised.

Annual revision of list.

(*6*) The list so prepared and revised shall be again revised once in every year. [Act X of 1882, s. 325.]

(*7*) The list so revised shall be deemed a new list, and shall be subject to all the rules hereinbefore contained as to the list originally prepared.

Preparation of list of special jurors.

325. In the case of any district for which the Local Government has declared that the trial of certain offences shall, if the Judge so direct, be by special jury, the Sessions Judge [Act X of 1882, s. 325A.]

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XXIII.—Of Trials before High Courts and Courts of Session.—Sections 326-333.)

and the Collector of such district or other officer as aforesaid shall prepare, in addition to the revised list hereinbefore prescribed, a special list containing the names of such jurors as are borne on the revised list and are, in the opinion of such Sessions Judge and Collector or other officer as aforesaid, by reason of their possessing superior qualifications in respect of property, character or education, fit persons to serve as special jurors: Provided always that the inclusion of the name of any person in such special list shall not involve the removal of his name from the revised list nor relieve him of his liability to serve as an ordinary juror in cases not tried by special jury.

District Magistrate to summon jurors and assessors.

326. (*1*) The Sessions Judge shall ordinarily, three days at least before the day which he may from time to time fix for holding the sessions, send a letter to the District Magistrate requesting him to summon as many persons named in the said revised list or the said special list as seem to the Sessions Judge to be needed for trials by jury and trials with the aid of assessors at the said sessions, the number to be summoned not being less than double the number required for any such trial.

(*2*) The names of the persons to be summoned shall be drawn by lot in open Court, excluding those who have served within six months unless the number cannot be made up without them; and the names so drawn shall be specified in the said letter.

Power to summon another set of jurors or assessors.

327. The Court of Session may direct jurors or assessors to be summoned at other periods than the period specified in section 326, when the number of trials before the Court renders the attendance of one set of jurors or assessors for a whole session oppressive, or whenever for other reasons such direction is found to be necessary.

Form and contents of summons.

328. Every summons to a juror or assessor shall be in writing, and shall require his attendance as a juror or assessor, as the case may be, at a time and place to be therein specified.

When Government or Railway servant may be excused.

329. When any person summoned to serve as a juror or assessor is in the service of Government or of a Railway Company, the Court to serve in which he is so summoned may excuse his attendance if it appears on the representation of the head of the office in which he is employed, that he cannot serve as a juror or assessor, as the case may be, without inconvenience to the public.

Court may excuse attendance of juror or assessor.

330. (*1*) The Court of Session may, for reasonable cause, excuse any juror or assessor from attendance at any particular session.

Court may relieve special jurors from liability to serve again as jurors for twelve months.

(*2*) The Court of Session may, if it shall think fit, at the conclusion of any trial by special jury, direct that the jurors who have served on such jury shall not be summoned to serve again as jurors for a period of twelve months. [Act X of 1882, s. 330 A.]

List of jurors and assessors attending.

331. (*1*) At each session the said Court shall cause to be made a list of the names of those who have attended as jurors and assessors at such session.

(*2*) Such list shall be kept with the list of the jurors and assessors as revised under section *324*.

(*3*) A reference shall be made in the margin of the said revised list to each of the names which are mentioned in the list prepared under this section.

Penalty for non-attendance of juror or assessor.

332. (*1*) Any person summoned to attend as a juror or as an assessor who, without lawful excuse, fails to attend as required by the summons, or who, having attended, departs without having obtained the permission of the Court, or fails to attend after an adjournment of the Court after being ordered to attend, shall be liable by order of the Court of Session to a fine not exceeding one hundred rupees.

(*2*) Such fine shall be levied by the District Magistrate by attachment and sale of any moveable property belonging to such juror or assessor within the local limits of the jurisdiction of the Court making the order.

(*3*) *For good cause shewn, the Court may remit or reduce any fine so imposed.*

(*4*) In default of recovery of the fine by attachment and sale, such juror or assessor may, by order of the Court of Session, be imprisoned in the civil jail for the term of fifteen days, unless such fine is paid before the end of the said term.

L.—Special Provisions for High Courts.

Power of Advocate General to stay prosecution.

333. At any stage of any trial before a High Court under this Code before the return of the verdict, the Advocate General may, if he thinks fit, inform the Court

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XXIII.—Of Trials before High Courts and Courts of Session.—Sections 334-336.—Chapter XXIV.—General Provisions as to Inquiries and Trials.—Sections 337-339.)

on behalf of Her Majesty that he will not further prosecute the defendant upon the charge; and thereupon all proceedings on such charge against the defendant shall be stayed, and he shall be discharged of and from the same. But such discharge shall not amount to an acquittal unless the presiding Judge otherwise directs.

Time of holding sittings.

334. For the exercise of its original criminal jurisdiction, every High Court shall hold sittings on such days and at such convenient intervals as the Chief Justice of such Court from time to time appoints.

Place of holding sittings.

335. (*1*) The High Court shall hold its sittings at the place at which it now holds them, or at such other place (if any) as the Governor General in Council in the case of the High Court at Fort William, or the Local Government in the case of the other High Courts, may direct.

(*2*) But it may, from time to time, in the case of the High Court at Fort William with the consent of the Governor General in Council, and in all other cases with the consent of the Local Government, hold sittings at such other places within the local limits of its appellate jurisdiction as the High Court appoints.

Notice of sittings.

(*3*) Such officer as the Chief Justice directs shall give notice beforehand in the local official Gazette of all sittings intended to be held for the exercise of the original criminal jurisdiction of the High Court.

Place of trial of European British subjects.

336. The High Court may direct that all European British subjects and persons liable to be tried by it under section 214 who have been committed for trial by it within certain specified districts or during certain specified periods of the year, shall be tried at the ordinary place of sitting of the Court, or direct that they shall be tried at a particular place named.

CHAPTER XXIV.

GENERAL PROVISIONS AS TO INQUIRIES AND TRIALS.

Tender of pardon to accomplice.

337. (*1*) In the case of any offence triable exclusively by the Court of Session or High Court, the District Magistrate a Presidency Magistrate, any Magistrate of the first class inquiring into the offence, or, with the sanction of the District Magistrate, any other Magistrate, may, with the view of obtaining the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, the offence under inquiry, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to such offence, and to every other person concerned, whether as principal or abettor, in the commission thereof.

(*2*) Every person accepting a tender under this section shall be examined as a witness in the case.

(*3*) Such person, if not on bail, shall be detained in custody until the termination of the trial by the Court of Session or High Court, as the case may be.

(*4*) Every Magistrate, other than a Presidency Magistrate, who tenders a pardon under this section, shall record his reasons for so doing; and, when any Magistrate has made such tender and examined the person to whom it has been made, he shall not try the case himself, although the offence which the accused appears to have committed may be triable by such Magistrate.

Power to direct tender of pardon.

338. At any time after commitment, but before judgment is passed, the Court to which the commitment is made may, with the view of obtaining on the trial the evidence of any person supposed to have been directly or indirectly concerned in, or privy to, any such offence, tender, or order the committing Magistrate or the District Magistrate to tender, a pardon on the same condition to such person.

Commitment of person to whom pardon has been tendered.

339. (*1*) Where a pardon has been tendered under section 337 or section 338, and any person who has accepted such tender has, either by wilfully concealing anything essential or by giving false evidence, not complied with the condition on which the tender was made, he may be tried for the offence in respect of which the pardon was so tendered, or for any other offence of which he appears to have been guilty in connection with the same matter.

(*2*) The statement made by a person who has accepted a tender of pardon may be given in evidence against him when the pardon has been withdrawn under this section.

(*3*) No prosecution for the offence of giving false evidence in respect of such statement shall be entertained without the sanction of the High Court.

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XXIV.—General Provisions as to Inquiries and Trials.—Sections 340-345.)

(*See definition of accused.*)

340. Every person accused before any Criminal Court may of right be defended by a pleader.

Right of accused to be defended.

341. If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

Procedure where accused does not understand proceedings.

342. (*1*) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial, without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined, and before he is called on for his defence.

Power to examine the accused.

(*2*) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court and the jury (if any) may draw such inference from such refusal or answers as it thinks just.

(*3*) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.

(*4*) No oath shall be administered to the accused.

343. Except as provided in sections 337 and 338, no influence, by means of any promise or threat or otherwise, shall be used to an accused person to induce him to disclose or withhold any matter within his knowledge.

No influence to be used to induce disclosures.

344. (*1*) If, from the absence of a witness, or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, the Court may, *if it thinks fit*, by order in writing, stating the reasons therefor, from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant *remand* the accused if in custody:

Power to postpone or adjourn proceedings.

Provided that no Magistrate shall *remand* an accused person to custody under this section for a term exceeding fifteen days at a time.

Remand.

(*2*) Every order made under this section by a Court other than a High Court shall be in writing signed by the presiding Judge or Magistrate.

EXPLANATION.—If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Reasonable cause for remand.

345. (*1*) The offences punishable under the sections of the Indian Penal Code described in the first two columns of the table next following may be compounded by the persons mentioned in the third column of that table:— XLV of 1860

Compounding offences.

Offence.	Sections of Indian Penal Code applicable.	Person by whom offence may be compounded.
Uttering words, etc., with deliberate intent to wound the religious feelings of any person	298	The person whose religious feelings are intended to be wounded.
Causing hurt . .	323, 334	The person to whom the hurt is caused.
Wrongfully restraining or confining any person.	341, 342	The person restrained or confined.
Assault or use of criminal force.	352, 355, 358	The person assaulted or to whom criminal force is used.
Unlawful compulsory labour.	374	The person compelled to labour.
Mischief, when the only loss or damage caused is loss or damage to a private person.	426, 427	The person to whom the loss or damage is caused.

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XXIV.—General Provisions as to Inquiries and Trials.—Sections 346-348.)

Offence.	Sections of Indian Penal Code applicable.	Person by whom offence may be compounded.
Criminal trespass	447	The person in possession of the property trespassed upon.
House-trespass	448	
Criminal breach of contract of service.	490, 491, 492	The person with whom the offender has contracted.
Adultery	497	The husband of the woman.
Enticing or taking away or detaining with a criminal intent a married woman.	498	
Defamation	500	The person defamed.
Printing or engraving matter knowing it to be defamatory.	501	
Sale of printed or engraved substance containing defamatory matter, knowing it to contain such matter.	502	
Insult intended to provoke a breach of the peace.	504	The person insulted.
Criminal intimidation, except when the offence is punishable with imprisonment for seven years.	506	The person intimidated.

(2) The offence of voluntarily causing hurt, voluntarily causing grievous hurt, causing hurt by an act which endangers life, or causing grievous hurt by an act which endangers life, punishable under section 324, *section 325*, section 335, section 337, section 338, *section 428*, *section 429*, *or section 430* of the Indian Penal Code, may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the person to whom the hurt has been caused. XLV of 1860.

(3) When any offence is compoundable under this section, the abetment of such offence or an attempt to commit such offence (when such attempt is itself an offence) may be compounded in like manner.

(4) When the person who would otherwise be competent to compound an offence under this section is a minor, an idiot or a lunatic, any person competent to contract on his behalf may compound such offence.

(5) When the accused has been committed for trial or when he has been convicted and an appeal is pending, no composition for the offence shall be allowed without the leave of the Court to which he is committed, or, as the case may be, before which the appeal is to be heard.

(6) The composition of an offence under this section shall have the effect of an acquittal of the accused.

(7) No offence shall be compounded *except as provided by this section.*

Procedure of Provincial Magistrate in cases which he cannot dispose of.

346. (1) If, in the course of an inquiry or a trial before a Magistrate in any district outside the presidency-towns, the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings and submit the case, with a brief report explaining its nature, to any Magistrate to whom he is subordinate or to such other Magistrate, having jurisdiction, as the District Magistrate directs.

(2) The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial.

Procedure when after commencement of inquiry or trial, Magistrate finds case should be committed.

347. (1) If in any inquiry before a Magistrate, or in any trial before a Magistrate before signing judgment, it appears to him at any stage of the proceedings that the case is one which ought to be tried by the Court of Session or High Court, and if he is empowered to commit for trial, he shall stop further proceedings and commit the accused under the provisions hereinbefore contained.

(2) If such Magistrate is not empowered to commit for trial, he shall proceed under section 346.

Trial of persons previously convicted of offences against coinage, stamp-law or property.

348. Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of the Indian Penal Code with imprisonment for a term of three years or upwards, is again accused of any offence punishable under either of those chapters with imprisonment for a term of three years or upwards, shall *be committed to the Court of Session or High Court, as the case may be, unless the Magistrate before whom the proceedings are pending is of opinion that he can himself pass an adequate sentence if the accused is convicted:* XLV of 1860.

Provided that, if the District Magistrate has been invested with powers under section 30, the case may be transferred to him instead of being committed to the Court of Session.

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XXIV.—General Provisions as to Inquiries and Trials.—Sections 349-352.—Chapter XXV.—Of the Mode of taking and recording Evidence in Inquiries and Trials.—Sections 353-355.)

Procedure when Magistrate cannot pass sentence sufficiently severe.

349. (*1*) Whenever a Magistrate of the second or third class, having jurisdiction, is of opinion, after hearing the evidence for the prosecution and the accused, that the accused is guilty, and that he ought to receive a punishment different in kind from, or more severe than, that which such Magistrate is empowered to inflict, or that he ought to be required to execute a bond under section 106 *or that he should be dealt with under section 561*, he may record the opinion and submit his proceedings, and forward the accused, to the District Magistrate or Subdivisional Magistrate to whom he is subordinate.

(*2*) The Magistrate to whom the proceedings are submitted may, if he thinks fit, examine the parties and recall and examine any witness who has already given evidence in the case, and may call for and take any further evidence, and shall pass such judgment, sentence or order in the case as he thinks fit, and as is according to law:

Provided that he shall not inflict a punishment more severe than he is empowered to inflict under sections 32 and 33.

Conviction or commitment on evidence partly recorded by one Magistrate and partly by another.

350. (*1*) Whenever any Magistrate, after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor, or partly recorded by his predecessor and partly recorded by himself; or he may re-summon the witnesses and re-commence the inquiry or trial:

Provided as follows:—

(*a*) in any trial the accused may, when the second Magistrate commences his proceedings, demand that the witnesses or any of them be re-summoned and re-heard;

(*b*) the High Court or, in cases tried by Magistrates subordinate to the District Magistrate, the District Magistrate may, whether there be an appeal or not, set aside any conviction passed on evidence not wholly recorded by the Magistrate before whom the conviction was had, if such Court or District Magistrate is of opinion that the accused has been materially prejudiced thereby, and may order a new inquiry or trial.

(*2*) Nothing in this section applies to cases in which proceedings have been stayed under section 346.

Detention of offenders attending Court.

351. (*1*) Any person attending a Criminal Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of examination for any offence of which such Court can take cognizance and which, from the evidence, may appear to have been committed, and may be proceeded against as though he had been arrested or summoned.

(*2*) When the detention takes place in the course of an inquiry under Chapter XVIII, or after a trial has been begun, the proceedings in respect of such person shall be commenced afresh and the witnesses re-heard.

Courts to be open.

352. The place in which any Criminal Court is held for the purpose of inquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.

CHAPTER XXV.

OF THE MODE OF TAKING AND RECORDING EVIDENCE IN INQUIRIES AND TRIALS.

Evidence to be taken in presence of accused.

353. Except as otherwise expressly provided, all evidence taken under Chapters XVIII, XX, XXI, XXII and XXIII shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.

Manner of recording evidence outside presidency-towns.

354. In inquiries and trials other than summary trials under this Code by or before a Magistrate (other than a Presidency Magistrate) or Sessions Judge, the evidence of the witnesses shall be recorded in the following manner.

Record in summons-cases and in trials of certain offences by first and second class Magistrates.

355. (*1*) In summons-cases tried before a Magistrate other than a Presidency Magistrate, and in cases of the offences mentioned in *sub-section* (*1*) *of* section 260, clauses (*b*) to (*k*), both inclusive, when tried by a Magistrate of the first or second class, *and in all proceedings under section 137, and section 514 (if not in the course of a trial)* the Magistrate shall make a memorandum of the substance of the evidence of each witness as the examination of the witness proceeds.

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions—Chapter XXV.—Of the Mode of taking and recording Evidence in Inquiries and Trials.—Sections 356-361.)

(2) Such memorandum shall be written and signed by the Magistrate with his own hand, and shall form part of the record.

(3) If the Magistrate is prevented from making a memorandum as above required, he shall record the reason of his inability to do so, and shall cause such memorandum to be made in writing from his dictation in open Court, and shall sign the same; and such memorandum shall form part of the record.

Record in other cases outside presidency-towns.

356. (1) In all other trials before Courts of Session and Magistrates (other than Presidency Magistrates) and in all inquiries under Chapters XI and XVIII, the evidence of each witness shall be taken down in writing in the language of the Court, by the Magistrate or Sessions Judge, or in his presence and hearing and under his personal direction and superintendence, and shall be signed by the Magistrate or Sessions Judge.

Evidence given in English.

(2) When the evidence of such witness is given in English, the Magistrate or Sessions Judge may take it down in that language with his own hand, and, unless the accused is familiar with English, or the language of the Court is English, an authenticated translation of such evidence in the language of the Court shall form part of the record.

Memorandum when evidence not taken down by the Magistrate or Judge himself.

(3) In cases in which the evidence is not taken down in writing by the Magistrate or Sessions Judge, he shall, as the examination of each witness proceeds, make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by the Magistrate or Sessions Judge with his own hand, and shall form part of the record.

(4) If the Magistrate or Sessions Judge is prevented from making a memorandum as above required, he shall record the reason of his inability to make it.

Language of record of evidence.

357. (1) The Local Government may direct that in any district or part of a district, or in proceedings before any Court of Session, or before any Magistrate or class of Magistrates, the evidence of each witness shall, in the cases referred to in section 356, be taken down by the Sessions Judge or Magistrate with his own hand and in his mother tongue, unless he is prevented by any sufficient reason from taking down the evidence of any witness, in which case he shall record the reason of his inability to do so, and shall cause the evidence to be taken down in writing from his dictation in open Court.

(2) The evidence so taken down shall be signed by the Sessions Judge or Magistrate, and shall form part of the record:

Provided that the Local Government may direct the Sessions Judge or Magistrate to take down the evidence in the English language, or in the language of the Court, although such language is not his mother-tongue.

Option to Magistrate in cases under section 355.

358. In cases of the kind mentioned in section 355, the Magistrate may, if he thinks fit, take down the evidence of any witness in the manner provided in section 356, or, if within the local limits of the jurisdiction of such Magistrate the Local Government has made the order referred to in section 357, in the manner provided in the same section.

Mode of recording evidence under section 356 or section 357.

359. (1) Evidence taken under section 356 or section 357 shall not ordinarily be taken down in the form of question and answer, but in the form of a narrative.

(2) The Magistrate or Sessions Judge may, in his discretion, take down, or cause to be taken down, any particular question and answer.

Procedure in regard to such evidence when completed.

360. (1) As the evidence of each witness taken under section 356 or section 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader, if he appears by pleader, and shall, if necessary, be corrected.

(2) If the witness deny the correctness of any part of the evidence when the same is read over to him, the Magistrate or Sessions Judge may, instead of correcting the evidence, make a memorandum thereon of the objection made to it by the witness, and shall add such remarks as he thinks necessary.

(3) If the evidence be taken down in a language different from that in which it has been given, and the witness does not understand the language in which it is taken down, the evidence so taken down shall be interpreted to him in the language in which it was given, or in a language which he understands.

Interpretation of evidence to accused or his pleader.

361. (1) Whenever any evidence is given in a language not understood by the accused, and he is present in person, it shall be interpreted to him in open Court in a language understood by him.

(2) If he appears by pleader and the evidence is given in a language other than the language of the Court, and not understood by the pleader, it

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XXV.—Of the Mode of taking and recording Evidence in Inquiries and Trials.—Sections 362-365.—Chapter XXVI.—Of the Judgment.—Section 366.)

shall be interpreted to such pleader in that language.

(3) When documents are put in for the purpose of formal proof, it shall be in the discretion of the Court to interpret as much thereof as appears necessary.

Record of evidence in Presidency Magistrates' Courts.

362. (1) In every case in which a Presidency Magistrate imposes a fine exceeding two hundred rupees, or imprisonment for a term exceeding six months, he shall either take down the evidence of the witnesses with his own hand, or cause it to be taken down in writing from his dictation in open Court. All evidence so taken down shall be signed by the Magistrate and shall form part of the record.

(2) Evidence so taken down shall ordinarily be recorded in the form of a narrative, but the Magistrate may, in his discretion, take down, or cause to be taken down, any particular question or answer.

(3) Sentences passed under section 35 on the same occasion shall, for the purposes of this section, be considered as one sentence.

Remarks respecting demeanour of witness.

363. When a Sessions Judge or Magistrate has recorded the evidence of a witness he shall also record such remarks (if any) as he thinks material respecting the demeanour of such witness whilst under examination.

Examination of accused how recorded.

364. (1) Whenever the accused is examined by any Magistrate, or by any Court other than a High Court established by Royal Charter or the Chief Court of the Punjab, the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full, in the language in which he is examined, or, if that is not practicable, in the language of the Court or English: and such record shall be shown or read to him, or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he understands, and he shall be at liberty to explain or add to his answers.

(2) When the whole is made conformable to what he declares is the truth, the record shall be signed by the accused and the Magistrate or Judge of such Court, and such Magistrate or Judge shall certify under his own hand that the examination was taken in his presence and hearing, and that the record contains a full and true account of the statement made by the accused.

(3) In cases in which the examination of the accused is not recorded by the Magistrate or Judge himself he shall be bound, unless he is a Presidency Magistrate, as the examination proceeds to make a memorandum thereof in the language of the Court, or, in English if he is sufficiently acquainted with the latter language; and such memorandum shall be written and signed by the Magistrate or Judge with his own hand, and shall be annexed to the record. If the Magistrate or Judge is unable to make a memorandum as above required, he shall record the reason of such inability.

(4) Nothing in this section shall be deemed to apply to the examination of an accused person under section 263.

Record of evidence in High Court.

365. Every High Court established by Royal Charter and the Chief Court of the Punjab may, from time to time, by general rule, prescribe the manner in which evidence shall be taken down in cases coming before the Court, and the Judges of such Court shall take down the evidence or the substance thereof in accordance with the rule (if any) so prescribed.

CHAPTER XXVI.

OF THE JUDGMENT.

Mode of delivering judgment.

366. (1) *Subject to the provisions of section 263 and section 310, clause (b),* the judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced, or the substance of such judgment shall be explained,—

(a) in open Court either immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders, and

(b) in the language of the Court, or in some other language which the accused or his pleader understands:

Provided that the whole judgment shall be read out by the presiding Judge, if he is requested so to do either by the prosecution or the defence.

(2) The accused shall, if in custody, be brought up, or, if not in custody, shall be required by the Court to attend, to hear judgment delivered, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only, in which case it may be delivered in the presence of his pleader.

(3) No judgment delivered by any Criminal Court shall be deemed to be invalid by reason only of the absence of any party or his pleader

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XXVI.—Of the Judgment.—Sections 367-373.)

on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(4) Nothing in this section shall be construed to limit in any way the extent of the provisions of section 537.

Language of judgment. Contents of judgment.

367. (1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court in the language of the Court, or in English; and shall contain the point or points for determination, the decision thereon and the reasons for the decision; and shall be dated and signed by the presiding officer in open Court as the time of pronouncing it.

(2) It shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which, the accused is convicted, and the punishment to which he is sentenced.

XLV of 1860.

(3) When the conviction is under the Indian Penal Code, and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

Judgment in alternative.

(4) If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(5) If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed:

Provided that, in trials by jury, the Court need not write a judgment, but the Court of Session shall record the heads of the charge to the jury.

Sentence of death.

368. (1) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

Sentence of transportation.

(2) No sentence of transportation shall specify the place to which the person sentenced is to be transported.

Court not to alter judgment.

369. No Court, other than a High Court, when it has signed its judgment, shall alter or review the same, except as provided in sections 395 *and* 484 or to correct a clerical error.

Presidency Magistrate's judgment.

370. Instead of recording a judgment in manner hereinbefore provided, a Presidency Magistrate shall record the following particulars:—

(*a*) the serial number of the case;

(*b*) the date of the commission of the offence;

(*c*) the name of the complainant (if any);

(*d*) the name of the accused person, and (except in the case of an European British subject) his parentage and residence;

(*e*) the offence complained of or proved;

(*f*) the plea of the accused and his examination (if any);

(*g*) the final order;

(*h*) the date of such order; and

(*i*) in all cases in which the Magistrate inflicts imprisonment, or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction.

Judgment to be explained and copy given to accused.

371. (1) On the application of the accused a copy of the judgment, or, when he so desires, a translation in his own language if practicable, or in the language of the Court, shall be given to him without delay. Such copy shall, in any case other than a summons-case, be given free of cost.

(2) In trials by jury in a Court of Session, a copy of the heads of the charge to the jury shall, on the application of the accused, be given to him without delay and free of cost.

Case of person sentenced to death.

(3) When the accused is sentenced to death by a Sessions Judge, such Judge shall further inform him of the period within which, if he wishes to appeal, his appeal should be preferred.

Judgment when to be translated.

372. The original judgment shall be filed with the record of proceedings, and, where the original is recorded in a different language from that of the Court, and the accused so requires, a translation thereof into the language of the Court shall be added to such record.

Court of Session to send copy of finding and sentence to District Magistrate.

373. In cases tried by the Court of Session, the Court shall forward a copy of its finding and sentence (if any) to the District Magistrate within the local limits of whose jurisdiction the trial was held.

The Code of Criminal Procedure, 1898

(Part VI.—Proceedings in Prosecutions.—Chapter XXVII.—Of the Submission of Sentences for Confirmation.—Sections 374-380. Chapter XXVIII.—Of Execution.—Section 381.)

CHAPTER XXVII.

OF THE SUBMISSION OF SENTENCES FOR CONFIRMATION.

Sentence of death to be submitted by Court of Session.

374. When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court and the sentence shall not be executed unless it is confirmed by the High Court.

Power to direct further inquiry to be made or additional evidence to be taken.

375. (*1*) If when such proceedings are submitted the High Court thinks that a further inquiry should be made into or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.

(*2*) Such inquiry shall not be made nor shall such evidence be taken in the presence of jurors or assessors, and, unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when the same is made or taken.

(*3*) When the inquiry and the evidence (if any) are not made and taken by the High Court, the result of such inquiry and the evidence shall be certified to such Court.

Power of High Court to confirm sentence or annul conviction.

376. In any case submitted under section 374, whether tried with the aid of assessors or by jury, the High Court—

(*a*) may confirm the sentence, or pass any other sentence warranted by law, or

(*b*) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or

(*c*) may acquit the accused person:

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

Confirmation or new sentence to be signed by two Judges.

377. In every case so submitted, the confirmation of the sentence, or any new sentence or order passed by the High Court, shall, when such Court consists of two or more Judges, be made, passed and signed by at least two of them.

Procedure in case of difference of opinion.

378. When any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case, with their opinions thereon shall be laid before another Judge, and such Judge, after such examination and hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Procedure in cases submitted to High Court for confirmation.

379. In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, under the seal of the High Court, and attested with his official signature, to the Court of Session.

Confirmation of sentence of Assistant Sessions Judge or Magistrate acting under section 34.

380. (*1*) When a sentence passed by an Assistant Sessions Judge or by a District Magistrate acting under section 34 is submitted to a Sessions Judge *or Additional Sessions Judge* for confirmation, such Judge—

(*a*) may confirm the sentence, or pass any other sentence which the lower Court might have passed; or

(*b*) may annul the conviction, and convict the accused of any offence of which the lower Court might have convicted him, or order a new trial *or commitment* on the same or an amended charge; or

(*c*) may acquit the accused; or

(*d*) if he thinks further inquiry or additional evidence upon any point bearing upon the guilt or innocence of the accused to be necessary, he may make such inquiry or take such evidence himself, or direct such inquiry or evidence to be made or taken; *or*

(*e*) *make any such further or other order as may be just.*

(*2*) Unless the Court of Session otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or evidence taken; and, when the sentence has been submitted by an Assistant Sessions Judge, such inquiry shall not be made, nor shall such evidence be taken, in the presence of jurors or assessors.

(*3*) When the inquiry and the evidence (if any) are not made and taken by the Court of Session, the result of such inquiry and the evidence shall be certified to such Court.

CHAPTER XXVIII.

OF EXECUTION.

Execution of order passed under section 376.

381. When a sentence of death passed by a Court of Session is submitted to the High Court for confirmation, such Court of Session shall, on receiving

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XXVIII.—Of Execution.—Sections 382-393.)

the order of confirmation or other order of the High Court thereon, cause such order to be carried into effect by issuing a warrant or taking such other steps as may be necessary.

Postponement of capital sentence on pregnant woman.

382. If a woman sentenced to death be found to be pregnant, the High Court shall order the execution of the sentence to be postponed, and may, *if it thinks fit*, commute the sentence to transportation for life.

Execution of sentences of transportation or imprisonment in other cases.

383. Where the accused is sentenced to transportation or imprisonment in cases other than those provided for by section 381, the Court passing the sentence shall forthwith forward a warrant to the jail in which he is *or is* to be confined, and, unless the accused is already confined in such jail, shall forward him to such jail, with the warrant.

Direction of warrant for execution.

384. Every warrant for the execution of a sentence of imprisonment shall be directed to the officer in charge of the jail or other place in which the prisoner is, or is to be, confined.

Warrant with whom to be lodged.

385. When the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor.

Warrant for levy of fine.

386. Whenever an offender is sentenced to pay a fine, the Court passing the sentence may, in its discretion, issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the offender, although the sentence directs that, in default of payment of the fine, the offender shall be imprisoned.

Effect of such warrant.

387. Such warrant may be executed within the local limits of the jurisdiction of such Court, and it shall authorise the distress and sale of any such property without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

Suspension of execution of sentence of imprisonment.

388. (*1*) When an offender has been sentenced to fine only, and to imprisonment in default of payment of the fine, and the Court issues a warrant under section 386, it may suspend the execution of the sentence of imprisonment and may release the offender on his executing a bond with or without sureties, as the Court thinks fit, conditioned for his appearance before such Court on the day appointed for the return to such warrant, such day not being more than fifteen days from the time of executing the bond; and in the event of the fine not having been realized the Court may direct the sentence of imprisonment to be carried into execution at once.

(*2*) *The provisions of this section shall also apply to any case in which a fine or penalty has been imposed, and on non-recovery of which imprisonment may be awarded.*

Who may issue warrant.

389. Every warrant for the execution of any sentence may be issued either by the Judge or Magistrate who passed the sentence or by his successor in office.

Execution of sentence of whipping only.

390. When the accused is sentenced to whipping only, the sentence shall be executed at such place and time as the Court may direct.

Execution of sentence of whipping, in addition to imprisonment.

391. (*1*) When the accused is sentenced to whipping in addition to imprisonment in a case which is subject to appeal, the whipping shall not be inflicted until fifteen days from the date of the sentence, or, if an appeal be made within that time, until the sentence is confirmed by the Appellate Court; but the whipping shall be inflicted as soon as practicable after the expiry of the fifteen days, or, in case of an appeal, as soon as practicable after the receipt of the order of the Appellate Court confirming the sentence.

(2) The whipping shall be inflicted in the presence of the officer in charge of the jail, unless the Judge or Magistrate orders it to be inflicted in his own presence.

(*3*) *Where the accused is sentenced to whipping in addition to imprisonment, the term of imprisonment shall not be less than three months.*

Mode of inflicting punishment.

392. (*1*) In the case of a person of or over sixteen years of age, whipping shall be inflicted with a light ratan not less than half an inch in diameter, in such mode, and on such part of the person, as the Local Government directs; and, in the case of a person under sixteen years of age, it shall be inflicted in the way of school-discipline with a light ratan.

Limit of number of stripes.

(*2*) In no case shall such punishment exceed thirty stripes.

Not to be executed instalments.

393. No sentence of whipping shall be executed by instalments: and

Exemptions.

none of the following persons shall be punishable with whipping (namely):—

(*a*) females;

(*b*) males sentenced to death, or to transportation, or to penal servitude, or to imprisonment for more than five years;

(*c*) males whom the Court considers to be more than forty five years of age.

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XXVIII.—Of Execution.—Sections 394-399.)

Whipping not to be inflicted if offender not in fit state of health.

394. (*1*) The punishment of whipping shall not be inflicted unless a medical officer, if present, certifies, or, if there is not a medical officer present, unless it appears to the Magistrate or officer present, that the offender is in a fit state of health to undergo such punishment.

Stay of execution.

(*2*) If, during the execution of a sentence of whipping, a medical officer certifies, or it appears to the Magistrate or officer present, that the offender is not in a fit state of health to undergo the remainder of the sentence, the whipping shall be finally stopped.

Procedure if punishment cannot be inflicted under section 394.

395. (*1*) In any case in which, under section 394, a sentence of whipping is, wholly or partially, prevented from being executed, the offender shall be kept in custody till the Court which passed the sentence can revise it; and the said Court may, at its discretion, either remit such sentence, or sentence the offender in lieu of whipping, or in lieu of so much of the sentence of whipping as was not executed, to imprisonment for any term not exceeding twelve months, which may be in addition to any other punishment to which he may have been sentenced for the same offence.

(*2*) Nothing in this section shall be deemed to authorise any Court to inflict imprisonment for a term exceeding that to which the accused is liable by law, or that which the said Court is competent to inflict.

Execution of sentences on escaped convicts.

396. (*1*) When sentence is passed under this Code on an escaped convict, such sentence, if of death, fine or whipping, shall, subject to the provisions hereinbefore contained, take effect immediately, and if of imprisonment, penal servitude or transportation, shall take effect according to the following rules, that is to say:—

(*2*) If the new sentence is severer in its *kind* than the sentence which such convict was undergoing when he escaped, the new sentence shall take effect immediately.

(*3*) When the new sentence is not severer in its *kind* than the sentence the convict was undergoing when he escaped, the new sentence shall take effect after he has suffered imprisonment, penal servitude or transportation, as the case may be, for a further period equal to that which, at the time of his escape, remained unexpired of his former sentence.

EXPLANATION.—For the purposes of this section—

(*a*) a sentence of transportation or penal servitude shall be deemed severer than a sentence of imprisonment;

(*b*) a sentence of imprisonment with solitary confinement shall be deemed severer than a sentence of the same description of imprisonment without solitary confinement; and

(*c*) a sentence of rigorous imprisonment shall be deemed severer than a sentence of simple imprisonment with or without solitary confinement.

Sentence on offender already sentenced for another offence.

397. When a person already undergoing a sentence of imprisonment, penal servitude or transportation is sentenced to imprisonment, penal servitude or transportation, such imprisonment, penal servitude or transportation shall commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced:

Provided that if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction be one of transportation, the Court may, in its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.

Saving as to sections 396 and 397.

398. (*1*) Nothing in section 396 or section 397 shall be held to excuse any person from any part of the punishment to which he is liable upon his former or subsequent conviction.

(*2*) When an award of imprisonment in default of payment of a fine is annexed to a substantive sentence of imprisonment, or to a sentence of transportation or penal servitude for an offence punishable with imprisonment, and the person undergoing the sentence is after its execution to undergo a further substantive sentence, or further substantive sentences, of imprisonment, transportation or penal servitude, effect shall not be given to the award of imprisonment in default of payment of the fine until the person has undergone the further sentence or sentences.

Confinement of youthful offenders in reformatories.

399. (*1*) When any person under the age of fifteen years is sentenced by any Criminal Court to imprisonment for any offence, the Court may direct that such person, instead of being imprisoned in a criminal jail, shall be confined in any reformatory established by the Local Government as a fit place for confinement, in which there are means of suitable discipline and of training in some branch of useful industry or which is kept by a person

cf. s. 10, Act VIII of 1897.

The Code of Criminal Procedure, 1898.

(Part VI.—Proceedings in Prosecutions.—Chapter XXVIII.—Of Execution.—Section 400.—Chapter XXIX.—Of Suspensions, Remissions and Commutations of Sentences.—Sections 401-402.—Chapter XXX.—Of previous Acquittals or Convictions.—Section 403.)

willing to obey such rules as the Local Government prescribes with regard to the discipline and training of persons confined therein.

(2) All persons confined under this section shall be subject to the rules so prescribed.

(3) *Nothing in this section or in sections 397 and 398 shall affect the provisions of the Reformatory Schools Act, 1897.*

VIII of 1897.

Return of warrant on execution of sentence.

400. When a sentence has been fully executed, the officer executing it shall return the warrant to the Court from which it issued, with an endorsement under his hand certifying the manner in which the sentence has been executed.

CHAPTER XXIX.

OF SUSPENSIONS, REMISSIONS AND COMMUTATIONS OF SENTENCES.

Power to suspend or remit sentences.

401. (1) When any person has been sentenced to punishment for an offence, the Governor General in Council, or the Local Government, may at any time, without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.

(2) Whenever an application is made to the Governor General in Council or the Local Government for the suspension or remission of a sentence, the Governor General in Council or the Local Government, as the case may be, may require the presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reasons for such opinion.

(3) If any condition on which a sentence has been suspended or remitted is, in the opinion of the Governor General in Council or of the Local Government, as the case may be, not fulfilled, the Governor General in Council or the Local Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant and remanded to undergo the unexpired portion of the sentence.

(4) The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.

(5) Nothing herein contained shall be deemed to interfere with the right of Her Majesty to grant pardons, reprieves, respites or remissions of punishment.

(6) *The Governor General in Council and the Local Government may by general rules or special orders give directions as to the suspension of sentences, and the conditions on which petitions should be presented and dealt with.*

Power to commute punishment.

402. The Governor General in Council, or the Local Government, may, without the consent of the person sentenced, commute any one of the following sentences for any other mentioned after it:—

death, transportation, penal servitude, rigorous imprisonment for a term not exceeding that to which he might have been sentenced, simple imprisonment for a like term, fine.

CHAPTER XXX.

OF PREVIOUS ACQUITTALS OR CONVICTIONS.

Person once convicted or acquitted not to be tried for same offence.

403. (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

(2) A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, *sub-section 1*.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed, if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) *Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897, or of section 188 of this Code.*

EXPLANATION.—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section.

X of 1897.

Illustrations.

(a) A is tried upon a charge of theft as a servant and acquitted. He cannot afterwards, while the acquittal remains in force, be charged with theft as a servant, or, upon the same facts, with theft simply, or with criminal breach of trust.

(*b*) A is tried upon a charge of murder and acquitted. There is no charge of robbery; but it appears from the facts that A committed robbery at the time when the murder was committed; he may afterwards be charged with, and tried for, robbery.

(*c*) A is tried for causing grievous hurt and convicted. The person injured afterwards dies. A may be tried again for culpable homicide.

(*d*) A is charged before the Court of Session and convicted of the culpable homicide of B. A may not afterwards be tried on the same facts for the murder of B.

(*e*) A is charged by a Magistrate of the first class with, and convicted by him of, voluntarily causing hurt to B. A may not afterwards be tried for voluntarily causing grievous hurt to B on the same facts, unless the case comes within paragraph 3 of the section.

(*f*) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.

(*g*) A, B and C are charged by a Magistrate of the first class with, and convicted by him of, robbing D. A, B and C may afterwards be charged with, and tried for, dacoity on the same facts.

(h) A is charged on the same facts with two different offences and is convicted of the one and acquitted of the other. The Appellate Court may convict him of the offence of which he has been acquitted and acquit him of the offence of which he has been convicted.

PART VII.

OF APPEAL, REFERENCE AND REVISION.

CHAPTER XXXI.

OF APPEALS.

Unless otherwise provided, no appeal to lie.

404. No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

Appeal from order rejecting application for restoration of attached property.

405. Any person whose application under section 89 for the delivery of property or the proceeds of the sale thereof has been rejected by any Court may appeal to the Court to which appeals ordinarily lie from the sentences of the former Court.

Appeal from order requiring security for good behaviour.

406. Any person *ordered* by a Magistrate other than the District Magistrate or a Presidency Magistrate, to give security for good behaviour *or to be placed under police supervision* under section 118 may appeal to the District Magistrate.

Appeal from sentence of Magistrate of the second or third class.

407. (*1*) Any person convicted on a trial held by any Magistrate of the second or third class, or any person sentenced under section 349 by a Sub-divisional Magistrate of the second class, may appeal to the District Magistrate.

Transfer of appeals to first class Magistrate.

(*2*) The District Magistrate may direct that any appeal under this section, or any class of such appeals, shall be heard by any Magistrate of the first class subordinate to him and empowered by the Local Government to hear such appeals, and thereupon such appeal or class of appeals shall be presented to such subordinate Magistrate, or, if already presented to the District Magistrate, shall be transferred to such subordinate Magistrate. The District Magistrate may withdraw from such Magistrate any appeal or class of appeals so presented or transferred.

Appeal from sentence of Assistant Sessions Judge or Magistrate of the first class.

408. Any person convicted on a trial held by an Assistant Sessions Judge, a District Magistrate or other Magistrate of the first class, or any person sentenced under section 349 by a Magistrate of the first class, may appeal to the Court of Session :

Provided as follows :—

(*a*) when in any case an Assistant Sessions Judge or a District Magistrate passes any sentence which is subject to the confirmation of the Court of Session, every appeal in such case shall lie to the High Court, but shall not be presented until the case has been disposed of by the Court of Session;

(*b*) any European British subject so convicted may, at his option, appeal either to the High Court or the Court of Session.

Appeals to Court of Session how heard.

409. An appeal to the Court of Session or Sessions Judge shall be heard by the Sessions Judge by an Additional Sessions Judge.

Appeal from sentence of Court of Session.

410. Any person convicted on a trial held by a Sessions Judge, or an Additional Sessions Judge, may appeal to the High Court.

Appeal from sentence of Presidency Magistrate.

411. Any person convicted on a trial held by a Presidency Magistrate may appeal to the High Court if the Magistrate has sentenced him to imprisonment for a term exceeding six months or to fine exceeding two hundred rupees.

No appeal in certain cases when accused pleads guilty.

412. Notwithstanding anything hereinbefore contained, where an accused person has pleaded guilty and has been convicted by a Court of Session or *any* Magistrate on such plea, there shall be no appeal except as to the extent or legality of the sentence.

No appeal in petty cases.

413. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted

The Code of Criminal Procedure, 1898.

(Part VII.—Of Appeal, Reference and Revision.—Chapter XXXI.—Of Appeals.—Sections 414-423.)

person in cases in which a Court of Session or the District Magistrate or other Magistrate of the first class passes a sentence of imprisonment not exceeding one month only, or of fine not exceeding fifty rupees only, or of whipping only.

EXPLANATION.—There is no appeal from a sentence of imprisonment passed by such Court or Magistrate, in default of payment of fine when no substantive sentence of imprisonment has *also* been passed.

No appeal from certain summary convictions.

414. Notwithstanding anything hereinbefore contained, there shall be no appeal by a convicted person in *any case* tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of imprisonment not exceeding three months only, or of fine not exceeding two hundred rupees only, or of whipping only.

Proviso to sections 413 and 414.

415. An appeal may be brought against any sentence referred to in section 413 or section 414 by which any two or more of the punishments therein mentioned are combined, but no sentence which would not otherwise be liable to appeal shall be appealable merely on the ground that the person convicted is ordered to find security to keep the peace.

EXPLANATION.—A sentence of imprisonment in default of payment of fine is not a sentence by which two or more punishments are combined within the meaning of this section.

Saving of sentences on European British subjects.

416. Nothing in sections 413 and 414 applies to appeals from sentences passed under Chapter XXXIII on European British subjects.

Appeal on behalf of Government in case of acquittal.

417. The Local Government may direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

Appeal on what matters admissible.

418 An appeal may lie on a matter of fact as well as a matter of law, except where the trial was by jury, in which case the appeal shall lie on a matter of law only.

EXPLANATION.—The alleged severity of a sentence shall for the purposes of this section be deemed to be a matter of law.

Petition of appeal.

419. Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against, and in cases tried by a jury, a copy of the heads of the charge recorded under section 367.

Procedure when appellant in jail.

420. If the appellant is in jail, he may present his petition of appeal and the copies accompanying the same to the officer in charge of the jail, who shall thereupon forward such petition and copies to the proper Appellate Court.

Summary rejection of appeal.

421. (*1*) On receiving the petition and copy under section 419 or section 420, the Appellate Court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may *dismiss* the appeal summarily:

Provided that no appeal presented under section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

(*2*) Before *dismissing* an appeal under this section, the Court may call for the record of the case, but shall not be bound to do so.

Notice of appeal.

422. If the Appellate Court does not *dismiss* the appeal summarily, it shall cause notice to be given to the appellant or his pleader, and to such officer as the Local Government may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal;

and, in cases of appeals under section 417, the Appellate Court shall cause a like notice to be given to the accused.

Powers of Appellate Court in disposing of appeal.

423. (*1*) The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record, and hearing he appellant or his pleader, if he appears, and he Public Prosecutor, if he appears, and, in case of an appeal under section 417, the accused, if he appears, the Court may, if it considers there is no sufficient ground for interfering, dismiss the appeal, or may—

(*a*) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

(*b*) in an appeal from a conviction, (*1*) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

The Code of Criminal Procedure, 1898.

Part VII.—Of Appeal, Reference and Revision.—Chapter XXXI.—Of Appeals.—Sections 424-431.—Chapter XXXII.—Of Reference and Revision.—Section 432.)

(2) alter the finding, maintaining, the sentence, or, with or without altering the finding, reduce the sentence, or, (3) with or without such reduction and with or without altering the finding alter the nature of the sentence but not so as to enhance the same;

(c) in an appeal from any other order, alter or reverse such order;

(d) *make any consequential or incidental order that may be just or proper.*

(2) Nothing herein contained shall authorise the Court to alter or reverse the verdict of a jury, unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him.

Judgments of subordinate Appellate Courts.

424. The rules contained in Chapter XXVI as to the judgment of a Criminal Court of original jurisdiction shall apply, so far as may be practicable, to the judgment of any Appellate Court other than a High Court;

Provided that, unless the Appellate Court otherwise directs, the accused shall not be brought up, or required to attend, to hear judgment delivered.

Order by High Court on appeal to be certified to lower Court.

425. (1) Whenever a case is decided on appeal by the High Court under this chapter, it shall certify its judgment or order to the Court by which the finding, sentence or order appealed against was recorded or passed. If the finding, sentence or order was recorded or passed by a Magistrate other than the District Magistrate, the certificate shall be sent through the District Magistrate.

(2) The Court to which the High Court certifies its judgment or order shall thereupon make such orders as are conformable to the judgment or order of the High Court; and, if necessary, the record shall be amended in accordance therewith.

Suspension of sentence pending appeal. Release of appellant on bail.

426. (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, if he is in confinement, that he be released on bail or on his own bond.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of any appeal by a convicted person to a Court subordinate thereto.

(3) When the appellant is ultimately sentenced to imprisonment, penal servitude or transportation, the time during which he is so released shall be excluded in computing the term for which he is so sentenced.

Arrest of accused in appeal from acquittal.

427. When an appeal is presented under section 417, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate Court, and the Court before which he is brought may commit him to prison pending the disposal of the appeal, or admit him to bail.

Appellate Court may take further evidence or direct it to be taken.

428. (1) In dealing with any appeal under this chapter, the Appellate Court, if it thinks additional evidence to be necessary, *shall record its reasons, and* may either take such evidence itself, or direct it to be taken by a Magistrate, or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) Unless the Appellate Court otherwise directs, the accused or his pleader shall be present when the additional evidence is taken; but such evidence shall not be taken in the presence of jurors or assessors.

(4) The taking of evidence under this section shall *be subject to the provisions of Chapter XXV as if it were an inquiry.*

Procedure where Judges of Court of appeal are equally divided.

429. When the Judges composing the Court of Appeal are equally divided in opinion, the case, with their opinions thereon, shall be laid before another Judge of the same Court, and such Judge, after such examination and such hearing (if any) as he thinks fit, shall deliver his opinion, and the judgment or order shall follow such opinion.

Finality of orders on appeal.

430. Judgments and orders passed by an Appellate Court upon appeal shall be final, except in the cases provided for in section 417 and Chapter XXXII.

Abatement of appeals.

431. Every appeal under section 417 shall finally abate on the death of the accused, and every other appeal under this chapter shall finally abate on the death of the appellant.

CHAPTER XXXII.

OF REFERENCE AND REVISION.

Reference by Presidency Magistrate to High Court.

432. A Presidency Magistrate may, if he thinks fit, refer for the opinion of the High Court any question of law which

The Code of Criminal Procedure, 1898.

(Part VII.—Of Appeal, Reference and Revision.—Chapter XXXII.—Of Reference and Revision.—Sections 433-439.)

arises in the hearing of any case pending before him, or may give judgment in any such case subject to the decision of the High Court on such reference and, pending such decision, may either commit the accused to jail, or release him on bail to appear for judgment when called upon.

Disposal of case according to decision of High Court.

433. (*1*) When a question has been so referred the High Court shall pass such order thereon as it thinks fit, and shall cause a copy of such order to be sent to the Magistrate by whom the reference was made, who shall dispose of the case conformably to the said order.

Direction as to costs.

(*2*) The High Court may direct by whom the costs of such reference shall be paid.

Power to reserve questions arising in original jurisdiction of High Court.

434. (*1*) When any person has, in a trial before a Judge of a High Court consisting of more Judges than one and acting in the exercise of its original criminal jurisdiction, been convicted of an offence, the Judge, if he thinks fit, may reserve and refer for the decision of a Court consisting of two or more Judges of such Court any question of law which has arisen in the course of the trial of such person, and the determination of which would affect the event of the trial.

Procedure when question reserved.

(*2*) If the Judge reserves any such question, the person convicted shall, pending the decision thereon, be remanded to jail, or, if the Judge thinks fit, be admitted to bail; and the High Court shall have power to review the case, or such part of it as may be necessary, and finally determine such question, and thereupon to alter the sentence passed by the Court of original jurisdiction, and to pass such judgment or order as the High Court thinks fit.

Power to call for records of *subordinate* Courts.

435. (*1*) The High Court or any Sessions Judge or District Magistrate, or any Sub-divisional Magistrate empowered by the Local Government in this behalf, may call for and examine the record of any proceeding before any *subordinate* Criminal Court situate within the local limits of its or his jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such *subordinate* Court.

(*2*) If any Sub-divisional Magistrate acting under sub-section (*1*) considers that any such finding, sentence or order is illegal or improper, or that any such proceedings are irregular, he shall forward the record, with such remarks thereon as he thinks fit, to the District Magistrate.

(*3*) Orders made under sections 143 and 144 and proceedings under section 176 are not proceedings within the meaning of this section.

(*4*) *If an application under this section has been made either to the Sessions Judge or District Magistrate, no further application shall be entertained by the other of them.*

Power to order commitment.

436. When, on examining the record of any case under section 435 or otherwise, the *Sessions Judge* or District Magistrate considers that such case is triable exclusively by the *Sessions Judge*, and that an accused person has been improperly discharged by the *subordinate* Court, the *Sessions Judge* or District Magistrate may cause him to be arrested, and may thereupon, instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been, in the opinion of the *Sessions Judge* or District Magistrate, improperly discharged:

Provided as follows:—

(*a*) that the accused has had an opportunity of showing cause to such *Judge* or Magistrate why the commitment should not be made;

(*b*) that, if such *Judge* or Magistrate thinks that the evidence shows that some other offence has been committed by the accused, such *Judge* or Magistrate may direct the *subordinate* Court to inquire into such offence.

Power to order inquiry.

437. On examining any record under section 435 or otherwise, the High Court or *the Sessions Judge* may direct the District Magistrate by himself or by any of the Magistrates subordinate to him to make, and the District Magistrate may himself make, or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203, or into the case of any accused person who has been discharged *or released under section 169, or the District Magistrate may himself deliver judgment and pass sentence or direct the subordinate Magistrate to deliver judgment and pass sentence on a person convicted under section 561.*

Report to High Court.

438. The *Sessions Judge* or District Magistrate may, if it or he thinks fit, on examining under section 435 or otherwise the record of any proceeding, report for the orders of the High Court the results of such examination, and, when such report contains a recommendation that a sentence be reversed, may order that the execution of such sentence be suspended, and, if the accused is in confinement, that he be released on bail or on his own bond.

High Court's powers of revision.

439. (*1*) In the case of any proceeding the record of which has been called for by itself or,

The Code of Criminal Procedure, 1898.

(Part VII—Of Appeal, Reference and Revision.—Chapter XXXII.—Of Reference and Revision.—Sections 440-442.)

(Part VIII.—Special Proceedings.—Chapter XXXIII.—Criminal Proceedings against Europeans and Americans.—Sections 443-446.)

which has been reported for orders, or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 195, 423, 426, 427 and 428, or on a Court by section 338, and may enhance the sentence; and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has commited, than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class.

(4) Nothing in this section applies to an entry made under section 273, or shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.

(5) *Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained, and, except as provided by this Code, no proceedings by way of appeal or revision shall be entertained.*

Optional with Court to hear parties.

440. No party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision:

Provided that the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader, and that nothing in this section shall be deemed to affect section 439, sub-section 2.

Statement by Presidency Magistrate of grounds of his decision to be considered by High Court.

441. When the record of any proceeding of any Presidency Magistrate is called for by the High Court under section 435, the Magistrate may submit with the record a statement setting forth the grounds of his decision or order and any facts which he thinks material to the issue; and the Court shall consider such statement before over-ruling or setting aside the said decision or order.

High Court's order to be certified to lower Court or Magistrate.

442. When a case is revised under this chapter by the High Court, it shall, *in manner hereinbefore provided*, certify its decision or order to the Court by which the finding, sentence or order revised was recorded or passed, and the Court or Magistrate to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified; and, if necessary, the record shall be amended in accordance therewith.

PART VIII.

SPECIAL PROCEEDINGS.

CHAPTER XXXIII.

CRIMINAL PROCEEDINGS AGAINST EUROPEANS AND AMERICANS.

Magistrates who may inquire into and try charges against European British subjects.

443. No Magistrate, unless he is a Justice of the Peace, and (except in the case of a District Magistrate or Presidency Magistrate) unless he is a Magistrate of the first class and an European British subject, shall inquire into or try any charge against an European British subject.

Sessions Judge to be an European British subject.

Assistant Sessions Judge to have held office for three years and to be specially empowered.

444. No Judge presiding in a Court of Session, except the Sessions Judge, shall exercise jurisdiction over an European British subject unless he himself is an European British subject; and if he is an Assistant Sessions Judge, unless he has held the office of Assistant Sessions Judge for at least three years, and has been specially empowered in this behalf by the Local Government.

Cognizance of offence committed by European British subject.

445. Nothing in section 443 or section 444 shall prevent any Magistrate from taking cognizance of an offence committed by any European British subject in any case in which he could take cognizance of a like offence if committed by another person:

Provided that, if he issues any process for the purpose of compelling the appearance of an European British subject accused of an offence, such process shall be made returnable before a Magistrate having jurisdiction to inquire into or try the case.

Sentences which may be passed by provincial Magistrates.

446. Notwithstanding anything contained in section 32 or section 34, no Magistrate other than a District Magistrate or Presidency Magistrate shall pass any sentence on an European British subject other than imprisonment for a term which may extend to three months, or fine which may extend to one thousand rupees or both, and a District Magistrate shall not pass any such sentence other than imprisonment for a term which may extend to six months, or fine which may extend to two thousand rupees, or both.

The Code of Criminal Procedure, 1898.

(Part VIII.—Special Proceedings.—Chapter XXXIII.—Criminal Proceedings against Europeans and Americans.—Sections 447-451.)

When commitment is to be to Court of Session and when to High Court.

447. (*1*) When an European British subject is accused of an offence before a Magistrate, and such offence cannot, in the opinion of such Magistrate, be adequately punished by him, and is not punishable with death or with transportation for life, such Magistrate shall, if he thinks that the accused ought to be committed, commit him to the Court of Session, or, in the case of a Presidency Magistrate, to the High Court.

(*2*) When the offence which appears to have been committed is punishable with death or with transportation for life, the commitment shall be to the High Court.

Trial of offences of which one is, and the others are not, punishable with death or transportation for life.

448. Where any person committed to the High Court under section 447 is charged with several offences of which one is punishable with death or transportation for life and the others with a less punishment, and the High Court considers that he should not be tried for the offence punishable with death or transportation, the High Court may nevertheless try him for the other offences.

Sentences which may be passed by Court of Session.

449. (*1*) Notwithstanding anything contained in section 31, no Court of Session shall pass on any European British subject any sentence other than a sentence of imprisonment for a term which may extend to one year, or fine, or both.

Procedure when Sessions Judge finds his powers inadequate.

(*2*) If, at any time after the commitment and before signing judgment the presiding Judge thinks that the offence which appears to be proved cannot be adequately punished by such a sentence, he shall record his opinon to that effect and transfer the case to the High Court. Such Judge may either himself bind over, or direct the committing Magistrate to bind over, the complainant and witnesses to appear before the High Court.

[Act X of 1882, s. 451.]

Jury or assessors before High Court or Court of Session.

450. (*1*) In trials of European British subjects before a High Court or Court of Session, if, before the first juror is called and accepted, or the first assessor is appointed, as the case may be, any such subject requires to be tried by a mixed jury, the trial shall be by a jury of which not less than half the number shall be Europeans or Americans or both Europeans and Americans.

(*2*) When any such trial before a Court of Session would in the ordinary course be with the aid of assessors, the European British subject accused, or, where there are several European British subjects accused, all of them jointly, may, instead of claiming to be tried by a mixed jury under sub-section (*1*), require that not less than half the number of the assessors shall be Europeans or Americans or both Europeans and Americans.

[Act X of 1882, s. 451.]

Right of European British subject to claim jury before District Magistrate.

451. (*1*) In trials of European British subjects before a District Magistrate, any such subject may, in a summons-case before he is heard in his defence under section 244, or in a warrant-case before he enters on his defence under section 256, claim that the trial shall be by a jury composed in manner prescribed by section 450.

(*2*) If a claim is made under sub-section (*1*) in a summons-case at the time when the Magistrate proceeds under section 244 to hear the accused, or in a warrant-case at the time when the Magistrate calls upon the accused under section 256 to enter upon the defence, the Magistrate shall forthwith issue the necessary orders for the trial by a jury as aforesaid.

(*3*) If such a claim is made at an earlier stage of the proceedings, the Magistrate shall issue such orders whenever it appears to him from the evidence recorded that there will be a sufficient case to go before a jury.

(*4*) In every such case the Magistrate shall notwithstanding anything contained in section 242, before issuing any orders as aforesaid, frame a formal charge.

(*5*) The provisions of sections 211, 216, 217 219 and 220 shall, so far as may be, apply for the purpose of securing the attendance of the complainant, the accused and the witnesses at every trial to be held under this section.

(*6*) The provisions of this Code relating to the procedure in a trial by jury before a Court of Session shall, as nearly as may be, apply to every trial under this section as if the District Magistrate were a Sessions Judge and the accused had been committed to his Court for trial.

(*7*) All Courts may construe any of the provisions referred to in sub-section (*5*) or sub-section (*6*), in so far as they are made applicable by *those* sub-sections, with such verbal alterations not affecting the substance as may be necessary or proper to adapt the same to the matter before them.

(*8*) Nothing in this section shall affect the power of the Magistrate to commit an accused person for trial under section 347 or section 147.

The Code of Criminal Procedure, 1898.

(Part VIII.—Special Proceedings.—Chapter XXXIII.—Criminal Proceedings against Europeans and Americans.—Sections 452-457.)

Act X of 1882, s. 451 B.

(9) If an accused person claims to be tried by jury under this section and in the opinion of the District Magistrate there is reason to believe that a jury composed in manner prescribed by section 450 cannot be constituted for the trial before himself, or cannot be so constituted without an amount of delay, expense or inconvenience which under the circumstances of the case would be unreasonable, he may, instead of issuing orders for the trial before himself under this section transfer the case for trial to such other District Magistrate or to such Sessions Judge as the High Court may, from time to time, by rules made by it in this behalf and approved by the Local Government, or by special order, direct.

Transfer to another Court in certain cases.

(10) When a case is transferred under this section to a Sessions Judge or District Magistrate, he shall with all convenient speed try it with the same powers (including the power of commitment) and according to the same procedure as if he were a District Magistrate acting under this section.

452. In any case in which an European British subject is accused jointly with a person not being an European British subject, and such European British subject is committed for trial before a High Court or Court of Session, such subject and person may be tried together, and the procedure on the trial shall be the same as it would have been had the European British subject been tried separately:

Trial of European British subject and Native jointly accused.

Provided that, if the European British subject requires under section 450 to be tried by a mixed jury, or by a mixed set of assessors, and the person not being an European British subject requires that he shall be tried separately, the latter person shall be tried separately in accordance with the provisions of Chapter XXIII.

When Native may claim separate trial.

453. (1) When any person claims to be dealt with as an European British subject, he shall state the grounds of such claim to the Magistrate before whom he is brought for the purposes of the inquiry or trial; and such Magistrate shall inquire into the truth of such statement, and allow the person making it a reasonable time within which to prove that it is true, and shall then decide whether he is or is not an European British subject, and shall deal with him accordingly. If any such person is convicted by such Magistrate and appeals from such conviction, the burden of proving that the Magistrate's said decision was wrong shall lie upon him.

Procedure on claim of person to be dealt with as European British subject.

(2) When any such person is committed by the Magistrate for trial before the Court of Session, and such person before such Court claims to be dealt with as an European British subject, such Court shall, after such further enquiry, if any, as it thinks fit, decide whether he is or is not an European British subject, and shall deal with him accordingly. If he is convicted by such Court and appeals from such conviction, the burden of proving that the Court's said decision was wrong shall lie upon him.

(3) When the Court before which any person is tried decides that he is not an European British subject, such decision shall form a ground of appeal from the sentence or order passed in such trial.

454. (1) If an European British subject does not claim to be dealt with as such by the Magistrate before whom he is tried or by whom he is committed, or if, when such claim has been made before, and disallowed by, the committing Magistrate, it is not again made before the Court to which such subject is committed, he shall be held to have relinquished his right to be dealt with as such European British subject and shall not assert it in any subsequent stage of the same case.

Failure to plead status a waiver.

(2) Unless the Magistrate has reason to believe that any person brought before him is not an European British subject, the Magistrate shall ask such person whether he is such a subject or not.

455. Where a person who is not an European British subject is dealt with as such under this chapter, and does not object, the inquiry, commitment, trial or sentence (as the case may be) shall not, by reason of such dealing, be invalid.

Trial under this chapter of person not an European British subject.

456. When any European British subject is unlawfully detained in custody by any person, such European British subject or any person on his behalf may apply to the High Court which would have jurisdiction over such European British subject in respect of any offence committed by him at the place where he is detained or to which he would be entitled to appeal from any conviction for any such offence, for an order directing the person detaining him to bring him before the High Court to abide such further order as it may pass.

Right of European British subject unlawfully detained to apply for order to be brought before High Court.

457. The High Court, if it thinks fit, may, before issuing such order, inquire, on affidavit or otherwise, into the grounds on which it is applied for, and grant or refuse such application; or

Procedure on such application.

The Code of Criminal Procedure, 1898.

(Part VIII.—Special Proceedings.—Chapter XXXIII.—Criminal Proceedings against Europeans and Americans.—Sections 458-463.—Chapter XXXIV.—Lunatics.—Section 464.)

it may issue the order in the first instance, and, when the person applying for it is brought before it, it may make such further order in the case as it thinks fit, after such inquiry (if any) as it thinks necessary.

Territories throughout which High Court may issue such orders.

458. The High Court may issue such orders throughout the territories within the local limits of its appellate criminal jurisdiction, and such other territories as the Governor General in Council may direct.

Application of Acts conferring jurisdiction on Magistrates or Courts of Session.

459. (*1*) Unless there is something repugnant in the context, all enactments heretofore or hereafter made by the Governor General in Council, which confer on Magistrates or on the Court of Session jurisdiction over offences, shall be deemed to apply to European British subjects, although such persons be not expressly referred to therein.

(*2*) Nothing in his section shall be deemed to authorise any Court to exceed the limits prescribed by this chapter as to the amount of punishment which it may inflict on an European British subject, or to confer jurisdiction on any Magistrate or any Judge presiding in a Court of Session, not being a Justice of the Peace.

Jury for trial of Europeans or Americans.

460. In every case triable by jury or with the aid of assessors, in which an European (not being an European British subject) or an American is the accused person, or one of the accused persons, not less than half the number of jurors or assessors shall, if practicable and if such European or American so claims, be Europeans or Americans.

Jury when European or American charged jointly with one of another race.

461. Whenever an European or American is charged before the Court of Session jointly with a person not an European or American and in compliance with a claim made under section 460 is tried by a jury, or with the aid of a set of assessors, of which at least one-half consists of Europeans and Americans, the latter person shall, if he so claims, be tried separately.

Summoning and empanelling jurors under section 450, 451, or 460.

462 (*1*) When a trial is to be held before the Court of Session in which the accused person, or one of the accused persons, is entitled to be tried by a jury constituted under the provisions of section *450* or section 460, or before the Court of a District Magistrate or Sessions Judge proceeding under section *451*, the Court shall, three days at least before the day fixed for holding such trial, cause to be summoned, in the manner hereinbefore prescribed, as many European and American jurors as are required for the trial.

(*2*) The Court shall also, at the same time, in like manner, cause to be summoned the same number of other persons named in the revised list, unless such number of such other persons has been already summoned for trials by jury at that session.

(*3*) From the whole number of persons returned the jurors who are to constitute the jury shall be chosen by lot in the manner prescribed in section 276, until a jury containing the proper number of Europeans or Americans, or a number approaching thereto as nearly as practicable, has been obtained:

Provided that, in any case in which the proper number of Europeans and Americans cannot otherwise be obtained, the Court may, in its discretion, for the purpose of constituting the jury, summon any person excluded from the list on the ground of his being exempted under section 320.

Conduct of criminal proceedings against European British subjects, etc.

463. Criminal proceedings against European British subjects, Europeans not being European British subjects, and Americans, before the Court of Session and High Court, shall, except as otherwise expressly provided, be conducted according to the provisions of this Code.

CHAPTER XXXIV.

LUNATICS.

Procedure in case of accused being lunatic.

464. (*1*) When a Magistrate holding an inquiry or a trial has reason to believe that the accused is of unsound mind and consequently incapable of making his defence, the Magistrate shall inquire into the fact of such unsoundness, and shall cause such person to be examined by the Civil Surgeon of the district or such other medical officer as the Local Government directs, and thereupon shall examine such Surgeon or other officer as a witness, and shall reduce the examination to writing.

(*2*) If such Magistrate is of opinion that the accused is of unsound mind and consequently incapable of making his defence, he shall postpone further proceedings in the case.

The Code of Criminal Procedure, 1898.

(Part VIII.—Special Proceedings.—Chapter XXXIV.—Lunatics—Sections 465-471.)

Procedure in case of person committed before Court of Session or High Court being lunatic.

465. (1) If any person committed for trial before a Court of Session or a High Court appears to the Court at his trial to be of unsound mind and consequently incapable of making his defence, the jury, or the Court with the aid of assessors, shall, in the first instance, try the fact of such unsoundness and incapacity, and, if satisfied of the fact, shall pass judgment accordingly, and thereupon the trial shall be postponed.

(2) The trial of the fact of the unsoundness of mind and incapacity of the accused shall be deemed to be part of his trial before the Court.

(3) For purposes of record, the Court may examine such witnesses and take such evidence as it may think fit in manner provided by section 512 of this Code, and any evidence so taken or received shall have the like effect as by that section provided.

Release of lunatic pending investigation or trial.

466. (1) Whenever an accused person is found to be of unsound mind and incapable of making his defence, the Magistrate or Court, as the case may be, if the case is one in which bail may be taken, may release him on sufficient security being given that he shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, and for his appearance when required before the Magistrate or Court or such officer as the Magistrate or Court appoints in this behalf.

Custody of lunatic.

(2) If the case is one in which bail may not be taken or if sufficient security is not given, the Magistrate or Court shall report the case to the Local Government, and the Local Government may order the accused to be confined in a lunatic asylum or other suitable place of safe custody, and the Magistrate or Court shall give effect to such order.

Resumption of inquiry or trial.

467. (1) Whenever an inquiry or a trial is postponed under section 464 or section 465, the Magistrate or Court, as the case may be, may at any time resume the inquiry or trial, and require the accused to appear or be brought before such Magistrate or Court.

(2) When the accused has been released under section 466, and the sureties for his appearance produce him to the officer whom the Magistrate or Court appoints in this behalf, the certificate of such officer that the accused is capable of making his defence shall be receivable in evidence.

Procedure on accused appearing before Magistrate or Court.

468. (1) If, when the accused appears or is again brought before the Magistrate or the Court as the case may be, the Magistrate or Court considers him capable of making his defence, the inquiry or trial shall proceed.

(2) If the Magistrate or Court considers the accused person to be still incapable of making his defence, the Magistrate or Court shall again act according to the provisions of section 464 or section 465, as the case may be.

When accused appears to have been insane.

469. When the accused appears to be of sound mind at the time of inquiry or trial, and the Magistrate is satisfied from the evidence given before him that there is reason to believe that the accused committed an act which, if he had been of sound mind, would have been an offence, and that he was at the time when the act was committed, by reason of unsoundness of mind, incapable of knowing the nature of the act or that it was wrong or contrary to law, the Magistrate shall proceed with the case, and, if the accused ought to be committed to the Court of Session or High Court, send him for trial before the Court of Session or High Court, as the case may be.

Judgment of acquittal on ground of lunacy.

470. Whenever any person is acquitted upon the ground that, at the time at which he is alleged to have committed an offence, he was, by reason of unsoundness of mind, incapable of knowing the nature of the act alleged as constituting the offence, or that it was wrong or contrary to law, the finding shall state specifically whether he committed the act or not.

Person acquitted on such ground to be kept in safe custody.

471. (1) Whenever such judgment states that the accused person committed the act alleged, the Magistrate or Court before whom or which the trial has been held shall, if such act would, but for the incapacity found, have constituted an offence, order such person to be kept in safe custody in such place and manner as the Magistrate or Court thinks fit, and shall report the case for the orders of the Local Government.

(2) The Local Government may order such person to be confined in a lunatic asylum, jail or other suitable place of safe custody.

Power of Governor General in Council to order criminal lunatics confined by order of Local Government to be removed from one province to another. [Act X of 1882, s. 475A.]

(3) The Governor General in Council may *by general or special order* direct that any person whom the Local Government has ordered under this chapter to be confined in a lunatic asylum, jail or other place of safe custody shall be removed from the place where he is confined to any lunatic asylum, jail or other place of safe custody in British India.

Power of Local Government to relieve Inspector General of certain functions. [Act X of 1882, s. 475B.]

(4) The Local Government may empower the officer in charge of the jail in which a person is confined under the provisions of section 466 or this section to discharge all or any of the functions of the Inspector General of Prisons under section 472, section 473 or section 474.

The Code of Criminal Procedure, 1898.

(Part VIII.—Special Proceedings.—Chapter XXXIV.—Lunatics.—Sections 472-475.—Chapter XXXV.—Proceedings in case of certain Offences affecting the Administration of Justice.—Sections 476-478.)

Lunatic prisoners to be visited by Inspector General.

472. When any person is confined under the provisions of section 466 or section 471, the Inspector General of Prisons, if such person is confined in a jail, or the visitors of the lunatic asylum, or any two of them, if he is confined in a lunatic asylum, may visit him in order to ascertain his state of mind; and he shall be visited once at least in every six months by such Inspector General or by two of such visitors as aforesaid; and such Inspector General or visitors shall make a special report to the Local Government as to the state of mind of such person.

Procedure where lunatic prisoner is reported capable of making his defence.

473. If such person is confined under the provisions of section 466, and such Inspector General or visitors shall certify that, in his or their opinion, such person is capable of making his defence, he shall be taken before the Magistrate or Court, as the case may be, at such time as the Magistrate or Court appoints, and the Magistrate or Court shall deal with such person under the provisions of section 468; and the certificate of such Inspector General or visitors as aforesaid shall be receivable as evidence.

Procedure where lunatic confined under section 466 or 471 is declared fit to be discharged.

474. (*1*) If such person is confined under the provisions of section 466 or section 471, and such Inspector General or visitors shall certify that, in his or their judgment, he may be discharged without danger of his doing injury to himself or to any other person, the Local Government may thereupon order him to be discharged, or to be detained in custody, or to be transferred to a public lunatic asylum if he has not been already sent to such an asylum; and, in case it orders him to be transferred to an asylum, may appoint a Commission, consisting of a judicial and two medical officers.

(*2*) Such Commission shall make formal inquiry into the state of mind of such person, taking such evidence as is necessary, and shall report to the Local Government, which may order his discharge or detention as it thinks fit.

Delivery of lunatic to care of relative.

475. (*1*) Whenever any relative or friend of any person confined under the provisions of section 466 or section 471 desires that he shall be delivered over to his care and custody, the Local Government, upon the application of such relative or friend, and on his giving security to the satisfaction of such Government that the person delivered shall be properly taken care of and shall be prevented from doing injury to himself or to any other person, may order such person to be delivered to such relative or friend.

(*2*) Whenever such person is so delivered, it shall be upon condition that he shall be produced for the inspection of such officer and at such times as the Local Government directs.

(*3*) The provisions of sections 472 and 474 shall, *mutatis mutandis*, apply to persons delivered under the provisions of this section; and the certificate of the inspecting officer appointed under this section shall be receivable as evidence.

CHAPTER XXXV.

PROCEEDINGS IN CASE OF CERTAIN OFFENCES AFFECTING THE ADMINISTRATION OF JUSTICE.

Procedure in cases mentioned in section 195.

476. (*1*) When any Civil, Criminal or Revenue Court is of opinion that there is ground for inquiring into any offence referred to in section 195, and committed before it or brought under its notice in the course of a judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send the case for inquiry or trial to the nearest Magistrate of the first class, and may send the accused in custody, or take sufficient security for his appearance, before such Magistrate; and may bind over any person to appear and give evidence on such inquiry or trial.

(*2*) Such Magistrate shall thereupon proceed according to law, *and as if upon complaint made*, and may, if he is authorised under section 192 to transfer cases, transfer the inquiry or trial to some other competent Magistrate.

(*3*) *Proceedings under this section shall not be questioned by way of revision under Chapter XXXII or otherwise.*

Power of Court of Session as to such offences committed before itself.

477. (*1*) Subject to the provisions of section 444, a Court of Session may charge a person for any offence referred to in section 195 and committed before it, or brought under its notice in the course of a judicial proceeding, and may commit, or admit to bail and try, such person upon its own charge.

(*2*) Such Court may direct the Magistrate to cause the attendance of any witnesses for the purposes of the trial.

Power of Civil and Revenue courts to complete *inquiry* and commit to High Court or Court of Session.

478. (*1*) When any such offence is committed before any Civil or Revenue Court, or brought under the notice of any Civil or Revenue Court in the course of a judicial proceeding, and the case is triable exclusively by the High Court or Court of Session, or such Civil or Revenue Court thinks that it ought to be tried by the High Court or Court of Session, such Civil or Revenue Court may, instead of sending the case under section 476 to a Magistrate for inquiry, itself complete the inquiry, and commit or hold to bail the accused person to take his trial before the High Court or Court of Session, as the case may be.

(*2*) For the purposes of an inquiry under this section the Civil or Revenue Court may, subject to the provisions of section 443, exercise all the

The Code of Criminal Procedure, 1898.

(Part VIII.—Special Proceedings.—Chapter XXXV.—Proceedings in case of certain Offences affecting the Administration of Justice.—Sections 479-486.)

powers of a Magistrate; and its proceedings in such inquiry shall be conducted as nearly as may be in accordance with the provisions of Chapter XVIII, and shall be deemed to have been held by a Magistrate.

Procedure of Civil or Revenue Court in such cases.

479. When any such commitment is made by a Civil or Revenue Court, the Court shall send the charge with the order of commitment and the record of the case to the Presidency Magistrate, District Magistrate or other Magistrate authorised to commit for trial, and such Magistrate shall bring the case before the High Court or Court of Session, as the case may be, together with the witnesses for the prosecution and defence.

Procedure in certain cases of contempt.

480. (*1*) When any such offence as is described in *section 174*, section 175, section 178, section 179, section 180 or section 228 of the Indian Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred rupees, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

XLV of 1860.

(*2*) Nothing in section 443 or section 444 shall be deemed to apply to proceedings under this section.

Record in such cases.

481. (*1*) In every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence.

(*2*) If the offence is under section 228 of the Indian Penal Code, the record must show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

XLV of 1860.

Procedure where Court considers that case should not be dealt with under section 480.

482. (*1*) If the Court in any case considers that a person accused of any of the offences referred to in section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or, if sufficient security is not given, shall forward such person under custody to such Magistrate.

(*2*) The Magistrate to whom any case is forwarded under this section shall proceed to hear the complaint against the accused person in manner hereinbefore provided.

When Registrar or Sub-Registrar to be deemed a Civil Court within sections 480 and 482.

483. When the Local Government so directs, any Registrar or any Sub-Registrar appointed under the Indian Registration Act, 1877, shall be deemed to be a Civil Court within the meaning of sections 480 and 482.

III of 1877.

Discharge of offender on submission or apology.

484. When any Court has under section 480 adjudged an offender to punishment for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may, in its discretion, discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

Imprisonment or committal of person refusing to answer or produce document.

485. If any *witness or person called to produce a document* before a Criminal Court refuses to answer such questions as are put to him or to produce any document in his possession or power which the Court requires him to produce, and does not offer any reasonable excuse for such refusal, such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment, or by warrant under the hand of the presiding Magistrate or Judge commit him to the custody of an officer of the Court, for any term not exceeding seven days, unless in the meantime such person consents to be examined and to answer, or to produce the document. In the event of his persisting in his refusal, he may be dealt with according to the provisions of section 480 or section 482, and, in the case of a Court established by Royal Charter, shall be deemed guilty of a contempt.

Appeals from convictions in contempt-cases.

486. (*1*) Any person sentenced by any Court under section 480 or section 485 may, notwithstanding anything hereinbefore contained, appeal to the Court to which decrees or orders made in such Court are ordinarily appealable.

(*2*) The provisions of Chapter XXXI shall, so far as they are applicable, apply to appeals under

The Code of Criminal Procedure, 1898.

(Part VIII.—Special Proceedings.—Chapter XXXV.—Proceedings in case of certain Offences affecting the Administration of Justice.—Section 487.—Chapter XXXVI.—Of the Maintenance of Wives and Children.—Sections 488-490.)

this section, and the Appellate Court may alter or reverse the finding, or reduce or reverse the sentence appealed against.

(3) An appeal from such conviction by a Court of Small Causes in a presidency-town shall lie to the High Court, and

an appeal from such conviction by any other Court of Small Causes shall lie to the Court of Session for the sessions division within which such Court is situate.

(4) An appeal from such conviction by any officer as Registrar or Sub-Registrar appointed as aforesaid may, when such officer is also Judge of a Civil Court, be made to the Court to which it would, under the preceding portion of this section, be made if such conviction were a decree by such officer in his capacity as such Judge, and in other cases may be made to the District Judge, or, in the presidency-towns, to the High Court.

Certain Judges and Magistrates not to try offences referred to in section 195 when committed before themselves.

487. (1) Except as provided in sections 477, 480 and 485, no Judge of a Criminal Court or Magistrate, other than a Judge of a High Court, the Recorder of Rangoon and the Presidency Magistrates, shall try any person for any offence referred to in section 195, when such offence is committed before himself or in contempt of his authority, or is brought under his notice as such Judge or Magistrate in the course of a judicial proceeding.

(2) Nothing in section 476 or section 482 shall prevent a Magistrate empowered to commit to the Court of Session or High Court from himself committing any case to such Court, or shall prevent a Presidency Magistrate from himself disposing of any case instead of sending it for inquiry to another Magistrate.

CHAPTER XXXVI.

OF THE MAINTENANCE OF WIVES AND CHILDREN.

Order for maintenance of wives and children.

488. (1) If any person having sufficient means neglects or refuses to maintain his wife or his legitimate or illegitimate child unable to maintain itself, the District Magistrate, a Presidency Magistrate, a Sub-divisional Magistrate or a Magistrate of the first class may, upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenane of his wife or such child, at such monthly rate, not exceeding fifty rupees in the whole, as such Magistrate thinks fit, and to pay the same to such person as the Magistrate from time to time directs.

(2) Such allowance shall be payable from the date of the order, *or if so ordered from the date of the complaint.*

Enforcement of order.

(3) If any person so ordered wilfully neglects to comply with the order, any such Magistrate may, for every breach of the order, issue a warrant for levying the amount due in manner hereinbefore provided for levying fines, and may sentence such person, for the whole or any part of each month's allowance remaining unpaid after the execution of the warrant, to imprisonment for a term which may extend to one month *or until payment*:

Provided that, if such person offers to maintain his wife on condition of her living with him, and she refuses to live with him, such Magistrate may consider any grounds of refusal stated by her, and may make an order under this section notwithstanding such offer, if he is satisfied *that there is just ground for so doing.*

(4) No wife shall be entitled to receive an allowance from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

(5) On proof that any wife in whose favour an order has been made under this section is living in adultery, or that without sufficient reason she refuses to live with her husband, or that they are living separately by mutual consent, the Magistrate shall cancel the order.

(6) All evidence under this chapter shall be taken in the presence of the husband or father, as the case may be, or, when his personal attendance is dispensed with, in the presence of his pleader, and shall be recorded in the manner prescribed *in the case of summons-cases*:

Provided that if the Magistrate is satisfied that he is wilfully avoiding service, or wilfully neglects to attend the Court, the Magistrate may proceed to hear and determine the case ex parte. Any order so made may be set aside for good cause shewn, on application made within three months.

(7) *The accused may tender himself as a witness, and in such case shall be examined as such, and the Court in dealing with complaints under this section shall have power to make such order as to costs as may be just.*

(8) *The accused may be proceeded against in any district where he resides or is, or where he last co-habited with the complainant.*

Alteration in allowance.

489. On proof of a change in the circumstances of any person receiving under section 488 a monthly allowance, or ordered under the same section to pay a monthly allowance to his wife or child, the Magistrate may make such alteration in the allowance as he thinks fit: Provided *that if he increases the allowance* the monthly rate of fifty rupees *in the whole* be not exceeded.

Enforcement of order of maintenance.

490. A copy of the order of maintenance shall be given without payment to the person in whose favour it is made, or to his guardian, if any, or to the person to whom the allowance is to be paid; and such order *may be enforced* by any Magistrate in any place where the person against whom it is made may be, on such Magistrate being satisfied as to the identity of the parties and the non-payment of the allowance due.

The Code of Criminal Procedure, 1898.

(Part VIII.—Special Proceedings.—Chapter XXXVII.—Directions of the Nature of a Habeas Corpus.—Section 491.)

(Part IX.—Supplementary Provisions.—Chapter XXXVIII.—Of the Public Prosecutor.—Sections 492-495.)

CHAPTER XXXVII.

DIRECTIONS OF THE NATURE OF A *HABEAS CORPUS*.

Power to issue directions of the nature of a *habeas corpus*.

491. (*1*) Any of the High Courts of Judicature at Fort William, Madras and Bombay may, whenever it thinks fit, direct—

(*a*) that a person within the limits of its ordinary original civil jurisdiction be brought up before the Court to be dealt with according to law;

(*b*) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;

(*c*) that a prisoner detained in any jail situate within such limits be brought before the Court to be there examined as a witness in any matter pending or to be inquired into in such Court;

(*d*) that a prisoner detained as aforesaid be brought before a Court-martial or any Commissioners acting under the authority of any commission from the Governor General in Council for trial or to be examined touching any matter pending before such Court-martial or Commissioners respectively;

(*e*) that a prisoner within such limits be removed from one custody to another for the purpose of trial; and

(*f*) that the body of a defendant within such limits be brought in on the Sheriff's return of *cepi corpus* to a writ of attachment.

(*2*) Each of the said High Courts may, from time to time, frame rules to regulate the procedure in cases under this section.

(*3*) Nothing in this section applies to persons detained under *the Bengal State Prisoners Regulation, 1818*, Madras Regulation II of 1819, or Bombay Regulation XXV of 1827, or *the State Prisoners Act, 1850*, or *the State Prisoners Act, 1858*.

III of 1818.

XXXIV of 1850.
III of 1858.

PART IX.

SUPPLEMENTARY PROVISIONS.

CHAPTER XXXVIII.

OF THE PUBLIC PROSECUTOR.

Power to appoint Public Prosecutors.

492. (*1*) The Governor General in Council or the Local Government may appoint, generally, or in any case, or for any specified class of cases, in any local area, one or more officers to be called Public Prosecutors.

(*2*) In any case committed for trial to the Court of Session, the District Magistrate, or, subject to the control of the District Magistrate, the Subdivisional Magistrate, may, in the absence of the Public Prosecutor, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below the rank of Assistant District Superintendent, to be Public Prosecutor for the purpose of such case.

Public Prosecutor may plead in all Courts in cases under his charge. Pleaders privately instructed to be under his direction.

493. The Public Prosecutor may appear and plead without any written authority before any Court in which any case of which he has charge is under inquiry, trial or appeal; and, if any private person instructs a pleader to prosecute in any Court any person in any such case, the Public Prosecutor shall conduct the prosecution, and the pleader so instructed shall act therein under his directions.

Effect of withdrawal from prosecution.

494. Any Public Prosecutor appointed by the Governor General in Council or the Local Government may, with the consent of the Court, in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person; and, upon such withdrawal,—

(*a*) if it is made before a charge has been framed, the accused shall be discharged;

(*b*) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted.

Permission to conduct prosecution.

495. (*1*) Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below a rank to be prescribed by the Local Government in this behalf with the previous sanction of the Governor General in Council, but no person other than the

The Code of Criminal Procedure, 1898.

(Part IX.—Supplementary Provisions.—Chapter XXXIX.—Of Bail.—Sections 496-502.)

Advocate General, Standing Counsel, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Local Government in this behalf shall be entitled to do so without such permission.

(2) Any person conducting the prosecution may do so personally or by a pleader.

(3) *And such person shall have the like power of withdrawing from the prosecution as is provided by section 494, and the provisions of that section shall apply to any withdrawal by such person.*

(4) An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted.

CHAPTER XXXIX.

OF BAIL.

Bail to be taken in case of bailable offence.

496. When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail:

Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided.

When bail may be taken in case of non-bailable offence.

497. (1) When any person accused of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, he may be released on bail, but he shall not be so released if there appear reasonable grounds for believing that he has been guilty of the offence of which he is accused.

(2) If it appears to such officer or Court at any stage of the investigation, inquiry or trial, as the case may be, that there are not reasonable grounds for believing that the accused has committed such offence, but that there are sufficient grounds for further inquiry into his guilt, the accused shall, pending such inquiry, be released on bail, or, at the discretion of such officer or Court, on the execution by him of a bond without sureties for his appearance as hereinafter provided.

(3) Any Court may, at any subsequent stage of any proceeding under this Code, cause any person who has been released under this section to be arrested, and may commit him to custody.

Power to direct admission to bail or reduction of bail.

498. The amount of every bond executed under this chapter shall be fixed with due regard to the circumstances of the case, and shall not be excessive; and the High Court or Court of Session may, in any case, whether there be an appeal on conviction or not, direct that any person be admitted to bail, or that the bail required by a police-officer or Magistrate be reduced.

Bond of accused and sureties.

499. (1) Before any person is released on bail or released on his own bond, a bond for such sum of money as the police-officer or Court, as the case may be, thinks sufficient shall be executed by such person, and, when he is released on bail, by one or more sufficient sureties conditioned that such person shall attend at the time and place mentioned in the bond, and shall continue so to attend until otherwise directed by the police-officer or Court, as the case may be.

(2) If the case so require, the bond shall also bind the person released on bail to appear when called upon at the High Court, Court of Session or other Court to answer the charge.

Discharge from custody.

500. (1) As soon as the bond has been executed the person for whose appearance it has been executed shall be released; and when he is in jail the Court admitting him to bail shall issue an order of release to the officer in charge of the jail, and such officer on receipt of the order shall release him.

(2) Nothing in this section, section 496 or section 497 shall be deemed to require the release of any person liable to be detained for some matter other than that in respect of which the bond was executed.

Power to order sufficient bail when that first taken is insufficient.

501. If, through mistake, fraud or otherwise, insufficient sureties have been accepted, or if they afterwards become insufficient, the Court may issue a warrant of arrest directing that the person released on bail be brought before it and may order him to find sufficient sureties, and on his failing so to do may commit him to jail.

Discharge of sureties.

502. (1) All or any sureties for the attendance and appearance of a person released on bail may at any time apply to a Magistrate to discharge the bond either wholly or so far as relates to the applicants.

(2) On such application being made the Magistrate shall issue his warrant of arrest directing that the person so released be brought before him.

The Code of Criminal Procedure, 1898.

(Part IX.—Supplementary Provisions.—Chapter XL.—Of Commissions for the Examination of Witnesses.—Sections 503-508.—Chapter XLI.—Special Rules of Evidence.—Section 509.)

(3) On the appearance of such person pursuant to the warrant, or on his voluntary surrender, the Magistrate shall direct the bond to be discharged either wholly or so far as relates to the applicants, and shall call upon such person to find other sufficient sureties, and, if he fails to do so, may commit him to custody.

CHAPTER XL.

OF COMMISSIONS FOR THE EXAMINATION OF WITNESSES.

When attendance of witness may be dispensed with.

503. (1) Whenever, in the course of an inquiry, a trial or any other proceeding under this Code, it appears to a Presidency Magistrate, a District Magistrate, a Court of Session or the High Court that the examination of a witness is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate or Court may dispense with such attendance and may issue a commission to any District Magistrate or Magistrate of the first class, within the local limits of whose jurisdiction such witness resides, to take the evidence of such witness.

Issue of commission, and procedure thereunder.

(2) When the witness resides in the *territories* of any Prince or *Chief in India* in which there is an officer representing the British Indian Government, the commission may be issued to such officer.

(3) The Magistrate or officer to whom the commission is issued, or, if he is the District Magistrate, he or such Magistrate of the first class as he appoints in this behalf, shall proceed to the place where the witness is or shall summon the witness before him, and shall take down his evidence in the same manner, and may for this purpose exercise the same powers, as in trials of warrant-cases under this Code.

Commission in case of witness being within presidency-town.

504. (1) If the witness is within the local limits of the jurisdiction of any Presidency Magistrate, the Magistrate or Court issuing the commission may direct the same to the said Presidency Magistrate, who thereupon may compel the attendance of, and examine, such witness as if he were a witness in a case pending before himself.

(2) Nothing in this section shall be deemed to affect the power of the High Court to issue commissions under the thirty-ninth and fortieth of Victoria, chapter 46, section 3.

39 & 40 Vict., c. 46.

Parties may examine witnesses.

505. (1) The parties to any proceeding under this Code in which a commission is issued may respectively forward any interrogatories in writing which the Magistrate or Court directing the commission may think relevant to the issue, and the Magistrate or officer to whom the commission is directed shall examine the witness upon such interrogatories.

(2) Any such party may appear before such Magistrate or officer by pleader, or, if not in custody, in person, and may examine, cross-examine and re-examine (as the case may be) the said witness.

Power of provincial Subordinate Magistrate to apply for issue of commission.

506. Whenever, in the course of an inquiry or a trial or any other proceeding under this Code before any Magistrate other than a Presidency Magistrate or District Magistrate, it appears that a commission ought to be issued for the examination of a witness whose evidence is necessary for the ends of justice, and that the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such Magistrate shall apply to the District Magistrate, stating the reasons for the application; and the District Magistrate may either issue a commission in the manner hereinbefore provided or reject the application.

Return of commission.

507. After any commission issued under section 503 or section 506 has been duly executed, it shall be returned, together with the deposition of the witness examined thereunder, to the Court out of which it issued; and the commission, the return thereto and the deposition shall be open at all reasonable times to inspection of the parties, and may, subject to all just exceptions, be read in evidence in the case by either party, and shall form part of the record.

Adjournment of inquiry or trial.

508. In every case in which a commission is issued under section 503 or section 506, the inquiry, trial or other proceeding may be adjourned for a specified time reasonably sufficient for the execution and return of the commission.

CHAPTER XLI.

SPECIAL RULES OF EVIDENCE.

Deposition of medical witness.

509. (1) The deposition of a Civil Surgeon or other medical witness, taken and attested by a Magistrate in the presence

of the accused, may be given in evidence in any inquiry, trial or other proceeding under this Code although the deponent is not called as a witness.

Power to summon medical witness.

(2) The Court may, if it thinks fit, summon and examine such deponent as to the subject-matter of his deposition.

(3) *The provisions of this section do not apply to the deposition of a Civil Surgeon or other medical witness taken under Chapter XL of this Code.*

Report of Chemical Examiner.

510. Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government, upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may be used as evidence in any inquiry, trial or other proceeding under this Code.

Previous conviction or acquittal how proved.

511. In any inquiry, trial or other proceeding under this Code, a previous conviction or acquittal may be proved, in addition to any other mode provided by any law for the time being in force,—

(*a*) by an extract certified under the hand of the officer having the custody of the records of the Court in which such conviction or acquittal was had to be a copy of the sentence or order; or

(*b*) in case of a conviction, either by a certificate signed by the officer in charge of the jail in which the punishment or any part thereof was inflicted, or by production of the warrant of commitment under which the punishment was suffered;

together with, in each of such cases, evidence as to the identity of the accused person with the person so convicted or acquitted.

Record of evidence in absence of accused.

512. If it be proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions. Any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into or trial for the offence with which he is charged, if the deponent is dead or incapable of giving evidence or his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case would be unreasonable.

CHAPTER XLII.

PROVISIONS AS TO BONDS.

Deposit instead of recognizance.

513. When any person is required by any Court or officer to execute a bond, with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix, in lieu of executing such bond.

Procedure on forfeiture of bond.

514. (1) Whenever it is proved to the satisfaction of the Court by which a bond under this Code *or under any rule made under section 401* has been taken, or of the Court of a Presidency Magistrate or Magistrate of the first class,

or, when the bond is for appearance before a Court, to the satisfaction of such Court,

that such bond has been forfeited, the Court shall record the grounds of such proof, and may call upon any person bound by such bond to pay the penalty thereof, or to show cause why it should not be paid.

(2) If sufficient cause is not shown and the penalty is not paid, the Court may proceed to recover the same by issuing a warrant for the attachment and sale of the moveable property belonging to such person *or his estate if he be dead.*

(3) Such warrant may be executed within the local limits of the jurisdiction of the Court which issued it; and it shall authorise the distress and sale of any moveable property belonging to such person without such limits, when endorsed by the District Magistrate or Chief Presidency Magistrate within the local limits of whose jurisdiction such property is found.

(4) If such penalty be not paid and cannot be recovered by such attachment and sale, the person so bound shall be liable, by order of the Court which issued the warrant, to imprisonment in the civil jail for a term which may extend to six months.

(5) The Court may, at its discretion, remit any portion of the penalty mentioned and enforce payment in part only.

(6) *Where a surety to a bond dies before the bond is forfeited his estate shall be discharged from all liability in respect of the bond, but the party who gave the bond may be required to find a new surety.*

Appeal from, and revision of, orders under section 514.

515. All orders passed under section 514 by any Magistrate other than a Presidency Magistrate or District Magistrate shall be appealable to the District Magistrate, or, if not so appealed, may be revised by him.

Power to direct levy of amount due on certain recognizances.

516. The High Court or Court of Session may direct any Magistrate to levy the amount due on a bond to appear and attend at such High Court or Court of Session.

The Code of Criminal Procedure, 1898.

(Part IX.—Supplementary Provisions.—Chapter XLIII.—Of the Disposal of Property.—Sections 517-523.)

CHAPTER XLIII.

OF THE DISPOSAL OF PROPERTY.

Order for disposal of property regarding which offence committed.

517. (1) When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any document or other property produced before it regarding which any offence appears to have been committed, or which has been used for the commission of any offence *or the title to which is doubtful or in dispute.*

(2) When a High Court or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

(3) When an order is made under this section *in respect of property the title to which is doubtful or in dispute, and* in a case in which an appeal lies, such order shall not (except when the property is live-stock or is subject to speedy and natural decay) be carried out until the period allowed for presenting such appeal has passed, or, when such appeal is presented within such period, until such appeal has been disposed of.

EXPLANATION.—In this section the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

Order may take form of reference to District or Subdivisional Magistrate.

518. In lieu of itself passing an order under section 517, the Court may direct the property to be delivered to the District Magistrate or to a Subdivisional Magistrate, who shall in such cases deal with it as if it had been seized by the police and the seizure had been reported to him in the manner hereinafter mentioned.

Payment to innocent purchaser of money found on accused.

519. When any person is convicted of any offence which includes, or amounts to, theft or receiving stolen property, and it is proved that any other person has bought the stolen property from him without knowing, or having reason to believe, that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the Court may, on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money a sum not exceeding the price paid by such purchaser be delivered to him.

Stay of order under section 517, 518 or 519.

520. Any Court of appeal, confirmation, reference or revision may direct any order under section 517, section 518 or section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court, and may modify, alter or annul such order *and make any further orders that may be just.*

Destruction of libellous and other matter.

521. (1) On a conviction under the Indian Penal Code, section 292, section 293, section 501 or section 502, the Court may order the destruction of all the copies of the thing in respect of which conviction was had, and which are in the custody of the Court or remain in the possession or power of the person convicted. XLV of 1860.

(2) The Court may, in like manner, on a conviction under the Indian Penal Code, section 272, section 273, section 274 or section 275, order the food, drink, drug or medical preparation in respect of which the conviction was had to be destroyed. XLV of 1860.

Power to restore possession of immoveable property.

522. (1) Whenever a person is convicted of an offence attended by criminal force, and it appears to the Court that by such force any person has been dispossessed of any immoveable property, the Court may, if it thinks fit, order such person to be restored to the possession of the same.

(2) No such order shall prejudice any right or interest to or in such immoveable property which any person may be able to establish in a civil suit.

Procedure by police upon seizure of property taken under section 51 or stolen.

523. (1) The seizure by any police-officer of property taken under section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the *disposal of such property or the* delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

Procedure where owner of property seized unknown.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property

consists, and requiring any person who may have a claim thereto to appear before him and establish his claim within six months from the date of such proclamation.

Procedure where no claimant appears within six months.

524. (*1*) If no person within such period establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, such property shall be at the disposal of the Government, and may be sold under the orders of the Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, or of a Magistrate of the first class empowered by the Local Government in this behalf.

(*2*) In the case of every order passed under this section, an appeal shall lie to the Court to which appeals against sentences of the Court passing such order would lie.

Power to sell perishable property.

525. If the person entitled to the possession of such property is unknown or absent, and the property is subject to speedy and natural decay, or the Magistrate to whom its seizure is reported is of opinion that its sale would be for the benefit of the owner, the Magistrate may at any time direct it to be sold; and the provisions of sections 523 and 524 shall, as nearly as may be practicable, apply to the nett proceeds of such sale.

CHAPTER XLIV.

OF THE TRANSFER OF CRIMINAL CASES.

High Court may transfer case or itself try it.

526. (*1*) Whenever it is made to appear to the High Court—

(*a*) that a fair and impartial enquiry or trial cannot be had in any Criminal Court subordinate thereto, or

(*b*) that some question of law of unusual difficulty is likely to arise, or

(*c*) that a view of the place in or near which any offence has been committed may be required for the satisfactory inquiry into or trial of the same, or

(*d*) that an order under this section will tend to the general convenience of the parties or witnesses, or

(*e*) that such an order is expedient for the ends of justice,

it may order—

(*i*) that any offence be inquired into or tried by any Court not empowered under sections 177 to 184 (both inclusive), but in other respects competent to inquire into or try such offence;

(*ii*) that any particular criminal case or appeal, or class of such cases or appeals, be transferred from a Criminal Court subordinate to its authority to any other such Criminal Court of equal or superior jurisdiction;

(*iii*) that any particular criminal case or appeal be transferred to and tried before itself; or

(*iv*) that an accused person be committed for trial to itself or to a Court of Session.

(*2*) When the High Court withdraws for trial before itself any case from any Court other than the Court of a Presidency Magistrate, it shall, except as provided in section 267, observe in such trial the same procedure which that Court would have observed if the case had not been so withdrawn.

(*3*) *The High Court may act either on the report of the lower Court, or on the application of a party interested, or on its own initiative.*

(*4*) Every application for the exercise of the power conferred by this section shall be made by motion which shall, except when the applicant is the Advocate General, be supported by affidavit or affirmation.

(*5*) When an accused person makes an application under this section, the High Court may direct him to execute a bond, with or without sureties, conditioned that he will, if convicted, pay the costs of the prosecutor.

Notice to Public Prosecutor of application under this section.

(*6*) Every accused person making any such application shall give to the Public Prosecutor notice in writing of the application, together with a copy of the grounds on which it is made; and no order shall be made on the merits of the application unless at least twenty-four hours have elapsed between the giving of such notice and the hearing of the application.

(*7*) Nothing in this section shall be deemed to affect any order made under section 197.

Adjournment on application under *this* section.

[Act X of 1882, s. 526A.]

(*8*) If, in any criminal case or appeal, before the commencement of the hearing, the Public Prosecutor, the complainant or the accused notifies to the Court before which the case or appeal is pending his intention to make an application under *this* section in respect of the case, the Court shall (*unless it is of opinion that the application is made for the purpose of delay or otherwise prejudicing the course of justice*) exercise the powers of postponement or adjournment given by section 344 in such a manner as will afford a reasonable time for the application being made and an order being obtained thereon, before the accused is called on for his defence, or, in the case of an appeal, before the hearing of the appeal.

Power of Governor General in Council to transfer criminal cases and appeals.

527. (*1*) The Governor General in Council may, by notification in the Gazette of India, direct the transfer of any particular criminal case or appeal

from one High Court to another High Court, or from any Criminal Court subordinate to one High Court to any other Criminal Court of equal or superior jurisdiction subordinate to another High Court, whenever it appears to him that such transfer will promote the ends of justice, or tend to the general convenience of parties or witnesses.

The Court to which such case or appeal is transferred shall deal with the same as if it had been originally instituted in, or presented to, such Court.

District or Subdivisional Magistrate may withdraw or refer cases.

528. (*1*) Any District Magistrate or Subdivisional Magistrate may withdraw any case from, or recall any case which he has made over to, any Magistrate subordinate to him, and may inquire into or try such case himself, or refer it for inquiry or trial to any other such Magistrate competent to inquire into or try the same.

Power to authorise District Magistrate to withdraw classes of cases.

(*2*) The Local Government may authorise the District Magistrate to withdraw from the Magistrate subordinate to him either such classes of cases as he thinks proper, or particular classes of cases.

(*3*) A Magistrate making an order under this section shall record in writing his reasons for making the same.

(*4*) *The head of a village under Madras Regulation IV of 1821 is a Magistrate for the purposes of this section.*

CHAPTER XLV.

OF IRREGULAR PROCEEDINGS.

Irregularities which do not vitiate proceedings.

529. If any Magistrate not empowered by law to do any of the following things, namely:—

(*a*) to issue a search-warrant under section 98;

(*b*) to order, under section 155, the police to investigate an offence;

(*c*) to hold an inquest under section 176;

(*d*) to issue process, under section 186, for the apprehension of a person within the local limits of his jurisdiction who has committed an offence outside such limits;

(*e*) to take cognizance of an offence under section 190, *sub-section 1*, clause (*a*) or clause (*b*);

(*f*) to transfer a case under section 192;

(*g*) to tender a pardon under section 337 or section 338;

(*h*) to sell property under section 524 or section 525; or

(*i*) to withdraw a case and try it himself under section 528;

erroneously in good faith does that thing, his proceedings shall not be set aside merely on the ground of his not being so empowered.

Irregularities which vitiate proceedings.

530. If any Magistrate, not being empowered by law in this behalf does any of the following things, namely:—

(*a*) attaches and sells property under section 88;

(*b*) issues a search-warrant for a letter, *parcel or other thing* in the Post-office, or a telegram in the Telegraph Department;

(*c*) demands security to keep the peace;

(*d*) demands security for good behaviour;

(*e*) discharges a person lawfully bound to be of good behaviour;

(*f*) cancels a bond to keep the peace;

(*g*) makes an order under section 133, as to a local nuisance;

(*h*) prohibits, under section 143, the repetition or continuance of a public nuisance;

(*i*) issues an order under section 144;

(*j*) makes an order under Chapter XII;

(*k*) takes cognizance, under section 190, clause (*c*), of an offence;

(*l*) passes a sentence, under section 349, on proceedings recorded by another Magistrate;

(*m*) calls, under section 435, for proceedings;

(*n*) makes an order for maintenance;

(*o*) revises, under section 515, an order passed under section 514;

(*p*) tries an offender;

(*q*) tries an offender summarily; or

(*r*) decides an appeal;

his proceedings shall be void.

Proceedings in wrong place.

531. No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed took place in a wrong sessions division, district, subdivision or other local area, unless it appears that such error *has in fact* occasioned a failure of justice.

The Code of Criminal Procedure, 1898.

(Part IX.—Supplementary Provisions.—Chapter XLV.—Of Irregular Proceedings. —Sections 532-538.—Chapter XLVI.—Miscellaneous.—Sections 539-540.

When irregular commitments may be validated.

532. (*1*) If any Magistrate or other authority purporting to exercise powers duly conferred, which were not so conferred, commits an accused person for trial before a Court of Session or High Court, the Court to which the commitment is made may, after perusal of the proceedings, accept the commitment if it considers that the accused has not been injured thereby, unless, during the inquiry and before the order of commitment, objection was made on behalf either of the accused or of the prosecution to the jurisdiction of such Magistrate or other authority.

(*2*) If such Court considers that the accused was injured, or if such objection was so made, it shall quash the commitment and direct a fresh inquiry by a competent Magistrate.

Non-compliance with provisions of section 164 or 364.

533. (*1*) If any Court before which a confession or other statement of an accused person recorded under section 164 or section 364 is tendered in evidence finds that *any of* the provisions of *either of* such sections have not been complied with by the Magistrate recording the statement, it shall take evidence that such person duly made the statement recorded; and, notwithstanding anything contained in the Indian Evidence Act, 1872, section 91, such statement shall be admitted if the error has not injured the accused as to his defence on the merits.

(*2*) *The provisions of this section apply to Courts of Appeal and Revision.*

Omission to ask question prescribed by section 454 (2).

534. An omission to ask any person whether he is an European British subject, in a case to which the second clause of section 454 applies, shall not affect the validity of any proceeding.

Effect of omission to prepare charge.

535. (*1*) No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed unless, in the opinion of the Court of appeal or revision, a failure of justice has been occasioned thereby.

(*2*) If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge shall be framed, and that the trial be re-commenced from the point immediately after the framing of the charge.

Trial by jury of offence triable with assessors.

536. (*1*) If an offence triable with the aid of assessors is tried by a jury, the trial shall not on that ground only be invalid.

Trial with assessors of offence triable by jury.

(*2*) If an offence triable by a jury is tried with the aid of assessors, the trial shall not on that ground only be invalid, unless the objection is taken before the Court records its finding.

Finding or sentence when reversible by reason of error or omission in charge or other proceedings.

537. Subject to the provisions hereinbefore contained, no finding, sentence or order (*whether interlocutory or final*) passed by a Court of competent jurisdiction shall be reversed or altered under Chapter XXVII or on appeal or revision on account—

(*a*) of any error, omission or irregularity in the complaint, summons, warrant, charge, *proclamation, order*, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or

(*b*) of the want of any sanction required by section 195, or

(*c*) of the omission to revise any list of jurors or assessors in accordance with section 324, or

(*d*) of any misdirection in any charge to a jury;

unless such error, omission, irregularity, want or misdirection has *in fact* occasioned a failure of justice.

Illustration.

A Magistrate being required by law to sign a document signs it by initials only. This is purely an irregularity, and does not affect the validity of the proceeding.

Distress not illegal nor distrainer a trespasser for defect or want of form in proceedings.

538. No distress made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, writ of distress or other proceedings relating thereto.

CHAPTER XLVI.

MISCELLANEOUS.

Courts and persons before whom affidavits may be sworn.

539. Affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed before such Court or the Clerk of the Crown, or any Commissioner or other person appointed by such Court for that purpose, or any Judge, or any Commissioner for taking affidavits in any Court of Record in British India, or any Commissioner to administer oaths in England or Ireland, or any Magistrate authorised to take affidavits or affirmations in Scotland.

Power to summon material witness, or examine person present.

540. Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it essential to the just decision of the case.

The Code of Criminal Procedure, 1898.

(Part IX.—Supplementary Provisions.—Chapter XLV.—Miscellaneous.—Sections 541-549.)

Power to appoint place of imprisonment.

541. (1) Unless when otherwise provided by any law for the time being in force, the Local Government may direct in what place any person liable to be imprisoned or committed to custody under this Code shall be confined.

[Act X of 1882, s. 541 A.]

Removal to criminal jail of accused or convicted persons who are in confinement in civil jail, and their return to the civil jail.

(2) If any person liable to be imprisoned or committed to custody under this Code is in confinement in a civil jail, the Court or Magistrate ordering the imprisonment or committal may direct that the person be removed to a criminal jail.

(3) When a person is removed to a criminal jail under sub-section (1), he shall, on being released therefrom, be sent back to the civil jail, unless either—

(a) three years have elapsed since he was removed to the criminal jail, in which case he shall be deemed to have been discharged from the civil jail under section 342 of the Code of Civil Procedure; or

XIV of 1882.

(b) the Court which ordered his imprisonment in the civil jail has certified to the officer in charge of the criminal jail that he is entitled to be discharged under section 341 of the Code of Civil Procedure.

XIV of 1882.

Power of Presidency Magistrate to order prisoner in jail to be brought up for examination.

542. (1) Notwithstanding anything contained in the Prisoners' Testimony Act, 1869, any Presidency Magistrate desirous of examining, as a witness or an accused person, in any case pending before him, any person confined in any jail within the local limits of his jurisdiction, may issue an order to the officer in charge of the said jail requiring him to bring such prisoner in proper custody, at a time to be therein named, to the Magistrate for examination.

XV of 1869.

(2) The officer so in charge, on receipt of such order, shall act in accordance therewith, and shall provide for the safe custody of the prisoner during his absence from the jail for the purpose aforesaid.

Interpreter to be bound to interpret truthfully.

543. When the services of an interpreter are required by any Criminal Court for the interpretation of any evidence or statement, he shall be bound to state the true interpretation of such evidence or statement.

Expenses of complainants and witnesses.

544. Subject to any rules made by the Local Government with the previous sanction of the Governor General in Council, any Criminal Court may order payment, on the part of Government, of the reasonable expenses of any complainant or witness attending for the purposes of any inquiry, trial or other proceeding before such Court under this Code.

Power of Court to pay expenses or compensation out of fine.

545. (1) Whenever under any law in force for the time being a Criminal Court imposes a fine or confirms in appeal, revision or otherwise a sentence of fine, or a sentence of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(a) in defraying expenses properly incurred in the prosecution;

(b) in compensation for the injury caused by the offence committed, where substantial compensation is, in the opinion of the Court, recoverable by civil suit.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

Payments to be taken into account in subsequent suit.

546. At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under section 545.

Moneys ordered to be paid recoverable as fines.

547. Any money (other than a fine) payable by virtue of any order made under this Code shall be recoverable as if it were a fine.

Copies of proceedings.

548. If any person affected by a judgment or order passed by a Criminal Court desires to have a copy of the Judge's charge to the jury or of any order or deposition or other part of the record, he shall, on applying for such copy, be furnished therewith:

Provided that he pay for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.

Delivery to military authorities of persons liable to be tried by Court-martial.

549. (1) The Governor General in Council may make rules, consistent with this Code and the Army Act or any similar law for the time being in force, as to the cases in which persons subject to military law shall be tried by a Court to which this Code applies or by Court-martial; and when

44 & 45 Vict. c. 58.